Federal Register

9–6–06 Wednesday
Vol. 71 No. 172 Sept. 6, 2006

United States Government Printing Office
SUPERINTENDENT OF DOCUMENTS
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U.S. Government Printing Office
(ISSN 0097-6326)

Federal Register

9–6–06
Vol. 71 No. 172

Wednesday
Sept. 6, 2006

Pages 52403–52732

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3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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, September 12, 2006
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

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

RIN 0580–AA90

United States Standards for Soybeans

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: We are revising the United States Standards for Soybeans to change the minimum test weight per bushel (TW) from a grade determining factor to an informational factor. As an informational factor, TW will be reported on official certificates unless requested otherwise. If the applicant requests that TW not be determined, soybean TW will not be determined and not reported on the official certificate. We also are changing the reporting requirements for TW in soybeans from whole and half pounds with a fraction of a half pound disregarded to reporting to the nearest tenth of a pound. Additionally, we are clarifying the reporting requirements for TW in canola. These changes will further help to ensure market-relevant standards and grades and clarify reporting requirements.

DATES: *Effective Date:* September 1, 2007.

FOR FURTHER INFORMATION CONTACT: Becca Riese at GIPSA, USDA, 1400 Independence Avenue, SW., Washington, DC, 20250–3630; Telephone (202) 720–4116; Fax Number (202) 720–7883; e-mail *Rebecca.A.Riese@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The United States Grain Standards Act (USGSA) authorizes the Secretary of Agriculture to establish official standards of kind and class, quality, and condition for soybeans and other grains (7 U.S.C. 76). The soybean standards appear in the regulations at 7 CFR 810.1604–810.1605. The U.S. Standards for Grain serve as the starting point to define U.S. grain quality in the marketplace.

This rule will make the following changes: (1) Revise designation of test weight in soybeans to be a non-grade determining informational factor, (2) amend the definition of "test weight per bushel" to indicate test weight for soybeans will be reported to the nearest tenth pound, and (3) clarify the certification requirements for test weight in soybeans and canola.

Designation of Minimum Test Weight Per Bushel

Since the establishment of the United States Standards for Soybeans in 1940, minimum TW has been included as a mandatory grade determining factor and has historically been perceived as a general indicator of overall soybean quality. Some perceive that a higher TW, or density, is indicative of a higher yield of oil and protein. Research indicates, however, that TW is not a good indicator of the oil and protein yield of processed soybeans.[1] A University of Illinois study concludes that the correlation coefficients between TW and protein and oil content are as low as 0.077 and 0.016 respectively.[2] Our analysis of our own inspection data supports the researchers' findings.

As part of its evaluation of TW, we conducted a statistical review of inspection data to determine the impact of removing TW as a grade determining factor on the certified grades. As discussed later in this document, we updated our analysis. The additional information confirms our earlier conclusion that the market should not anticipate grade inflation or deflation due to our actions.

Based on our analysis of inspection data and other information, we are changing the minimum TW per bushel from a grade determining factor to a non-grade determining informational factor in the official U.S. Standards for Soybeans. Even though we are changing TW to an informational factor, we will still require the measurement and reporting of TW for each official soybean grade inspection unless requested otherwise. Our evaluation indicates that not all buyers of soybeans are interested in the TW information; consequently, we will allow an optional exemption in the certification reporting requirements.

Reporting and Certification of Minimum Test Weight Per Bushel

We are revising 7 CFR 810.102(d) to report TW in soybeans to the nearest tenth of a pound. Presently, TW in soybeans is certified in whole and half pounds with fractions of a half pound disregarded. This change will bring the reporting requirements for TW into line with the reporting requirements for other factors in the Official Standards for Soybeans, such as foreign material and moisture content.

Inspection Plan Tolerances

To reflect the proposed change of TW from a grade determining factor to a non-grade determining informational factor, we are revising the tables pertaining to soybean grade limits in 7 CFR 800.86 of the regulations. Shiplots, unit trains, and lash barge lots are inspected in accordance to a statistically based inspection plan (7 CFR 800, originally published at 55 FR 24030; June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. Changing TW from a grade determining factor to an informational factor necessitates removing soybean TW breakpoints from the Grade Limits and Breakpoints for Soybeans table and replacing them in the Breakpoints for Soybean Special Grades and Factors table.

Certification

We are clarifying the TW certification reporting requirements for both soybeans and canola in 7 CFR 800.162(c). For soybeans, we are clarifying the reporting requirements for test weight as a non-grade determining factor and the optional exemption for TW determination. The exemption will allow the applicant for inspection to request that TW not be determined, and

[1] Hill, L.D., "Changes in the Grain Standards Act," Grain Grades and Standards, 113–184. West, V.J., "How Good Are Soybean Grades?," Illinois Farm Economics, no. 192, Extension Service in Agriculture and Home Economics, College of Agriculture, University of Illinois, May 1951, p. 1166.

[2] Hill, L.D., "Improving Grades and Standards for Soybeans," p. 829.

therefore not reported. With regard to canola, we are clarifying that TW in canola is only determined and reported upon request of an applicant.

Comment Review

In the March 29, 2006 **Federal Register** (71 FR 15639–15643), we invited comments on our proposed rule identifying changes to the United States Standards for Soybeans.

We received one comment during the 60-day comment period. The comment was submitted jointly by the Japan Oilseed Processors Association and the Japan Oil and Fat Importers and Exporters Association.

The commenters were of the view that a change in the status of TW would adversely impact the distribution of soybean grades (that is, grade inflation or deflation).

As discussed in the proposed rule, we analyzed inspection data to determine the impact of removing TW as a grade determining factor on the certified grades. The review established that in over 400,000 soybean inspections, certified between January 1, 2001, and September 30, 2003, 99.5 percent of the official grades would have been unaffected by the removal of TW as a grading factor. In preparation of this final rule, we updated our analysis to cover the five-year period from January 1, 2001, through December 31, 2005. The review indicated that approximately 2.2 percent of U.S. No. 2 Yellow soybeans, which is the common trading standard, would have graded as U.S. No. 1, if TW was not a grade determining factor. In other words, for the data analyzed, the certified grade may have improved 2.2 percent of the time, if TW had not been a grading factor. Further, we found that approximately 0.7 percent of U.S. No. 3 Yellow soybeans would have certified as U.S. No. 2, if TW was not a grade determining factor. In both instances, we consider the percentage change as insignificant. As a result, the market should not anticipate grade inflation or deflation due to this change.

The commenters also were of the view that a change in the status of TW would result in an increase in the percentage of smaller sized soybeans and more broken soybeans. We have no evidence that a change in the status of TW from a grade determining factor to an informational factor will result in a higher percentage of smaller-sized soybeans or result in more broken soybeans or splits. As a result, the market should not anticipate an increase in the amount of smaller sized soybeans or in splits in U.S. soybeans, on average, due to this change.

Nonetheless, buyers of U.S. soybeans may also ask for a sizing determination. As part of the sizing request, buyers can specify the sieve size. We report the percentage of the size fractions, as requested, to the nearest tenth in the Remarks section of the certificate. We use statements, such as "(a certain percent) passing through (a specified round-hole sieve)" and "(a certain percent) remaining on top of (a specified sieve)."

Further, the percentage of splits in a sample is already a grading factor. Additionally, small broken pieces of soybeans, which pass through an 8/64 round-hole sieve, are considered as foreign material, another grading factor. If there is a concern about splits or foreign material, a buyer may specify tighter limits than that allowed by grade. For example, a buyer may contract for U.S. No. 2 Yellow soybeans with splits not to exceed 10.0 percent. The specification is tighter than the grade limit of 20.0 percent for U.S. No. 2 Yellow soybeans.

Buyers may also request official analysis for oil and protein content. In recognition of protein and oil as the true determinants of value in soybean processing and the markets' need to identify these intrinsic properties, GIPSA tests for both soybean protein and oil as official criteria under the USGSA.

Therefore, we are making no change in this final rule as a result of the comment.

Effective Date

As specified in the USGSA (7 U.S.C. 76(b)), amendments to the standards cannot become effective less than one calendar year after public notification, unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner. Making this rule effective on September 6, 2007 would be after the start of the marketing year, which begins September 1, 2007. There are inherent benefits in making this rule effective in time to have the same standards in place for the entire marketing year; we have determined that it is in the public interest to do so. There were no changes made in this final rule, so the standards are consistent with those proposed as published on March 29, 2006. For these reasons this final rule is effective September 1, 2007, for the beginning of the soybean harvest, and will facilitate domestic and export marketing of soybeans.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be exempt for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

We are amending the soybean standards to change TW from a grade determining factor to an informational factor. We are changing the reporting requirements for TW in soybeans from whole and half pounds with a fraction of a half pound disregarded to reporting to the nearest tenth of a pound. In addition, we are clarifying the reporting requirements for TW in canola. These changes are needed to ensure market-relevant standards and to clarify reporting requirements. Further, the regulations and standards are applied equally to all entities.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market.

Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. We provide mandatory inspection and weighing services at 33 export facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration.

The U.S. soybean industry, including producers (approximately 663,880), handlers (approximately 6,000 domestic elevators), traders (approximately 1,402 eligible soybean futures traders), processors (approximately 70 facilities), merchandisers, and exporters, are the primary users of the U.S. Standards for Soybean and utilize the official standards as a common trading language to market soybeans. Some of the entities may be small.

The USGSA (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the

preceding or current calendar year. At present, there are 92 registrants who account for practically 95 percent of U.S. soybean exports, which for fiscal year (FY) 2005 totaled approximately 23,174,129 metric tons (MT). While most of the 92 registrants are large businesses, some may be small.

GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements are approved under OMB Number 0580–0013. An insignificant change in burden will result from the soybean informational factor change. However, any burden measurement, as a result of this change, will remain within the previously approved information collection requirements. Accordingly, no further OMB clearance is required under the Paperwork Reduction Act.

E-Government Act Compliance

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Grains, Conflicts of interest, Exports, Freedom of information, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 810

Exports, Grains.

■ For reasons set out in the preamble, 7 CFR parts 800 and 810 are amended as follows:

PART 800—GENERAL REGULATIONS

■ 1. Revise the authority citation for part 800 to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 2. In § 800.86 (c)(2), revise tables 17 and 18 to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 17.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SOYBEANS

Grade	Maximum limits of—									
	Damaged kernels				Foreign material (percent)		Splits (percent)		Soybeans of other colors (percent)	
	Heat-damaged (percent)		Total (percent)							
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1	0.2	0.2	2.0	0.8	1.0	0.2	10.0	1.6	1.0	0.7
U.S. No. 2	0.5	0.3	3.0	0.9	2.0	0.3	20.0	2.2	2.0	1.0
U.S. No. 3	1.0	0.5	5.0	1.2	3.0	0.4	30.0	2.5	5.0	1.6
U.S. No. 4	3.0	0.9	8.0	1.5	5.0	0.5	40.0	2.7	10.0	2.3

[1] Soybeans that are purple mottled or stained which will not be graded higher than U.S. No. 3.
[2] Soybeans that are materially weathered which will not be graded not higher than U.S. No. 4.

TABLE 18.—BREAKPOINTS FOR SOYBEAN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Garlicky	5 or more per 1,000 grams	2
Infested	Same as in § 810.107	0
Soybeans of other colors	Not more than 10.0%	2.3
Moisture	As specified by contract or load order grade	0.3
Test Weight	As specified by contract or load order	−0.4

* * * * *

■ 3. In § 800.162, revise paragraph (a) and add paragraph (c) to read as follows:

§ 800.162 Certification of grade; special requirements.

(a) *General.* Except as provided in paragraph (c) of this section, each official certificate for grade shall show:

(1) The grade and factor information required by the Official U.S. Standards for Grain;

(2) The test weight of the grain, if applicable;

(3) The moisture content of the grain;

(4) The results for each official factor for which a determination was made;

(5) The results for each official factor that determined the grade when the grain is graded other that U.S. No. 1;

(6) Any other factor information considered necessary to describe the grain; and

(7) Any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

* * * * *

(c) Test weight for canola and soybeans. Official canola inspection certificates will show, in addition to the requirements of paragraphs (a) and (b) of this section, the official test weight per bushel only upon request by the

applicant. Official soybean inspection certificates will show, in addition to the requirements of paragraphs (a) and (b) of this section, the official test weight per bushel unless the applicant requests that test weight not be determined. Upon request, soybean test weight results will not be determined and/or reported on the official certificate.

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

■ 4. Revise the authority citation for part 810 to read as follows:

Authority: 7 U.S.C. 71–87k.

■ 5. In § 810.102, revise paragraph (d) to read as follows:

§ 810.102 Definition of other terms.

* * * * *

(d) *Test weight per bushel.* The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test weight per bushel in the standards for barley, flaxseed, rye, sunflower seed, triticale, and wheat is determined after mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth pound for corn, rye, soybeans, triticale, and wheat. Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.

* * * * *

■ 6. Revise § 810.1604 to read as follows:

§ 810.1604 Grades and grade requirements for soybeans.

Grading factors	Grades U.S. Nos.			
	1	2	3	4
	Maximum percent limits of:			
Damaged kernels:				
Heat (part of total)	0.2	0.5	1.0	3.0
Total	2.0	3.0	5.0	8.0
Foreign material	1.0	2.0	3.0	5.0
Splits	10.0	20.0	30.0	40.0
Soybeans of other colors: [1]	1.0	2.0	5.0	10.0
	Maximum count limits of:			
Other material:				
Animal filth	9	9	9	9
Caster beans	1	1	1	1
Crotalaria seeds	2	2	2	2
Glass	0	0	0	0
Stones [2]	3	3	3	3
Unknown foreign substance	3	3	3	3
Total [3]	10	10	10	10

U.S. Sample grade are Soybeans that:
(a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or
(b) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or
(c) Are heating or of distinctly low quality.

[1] Disregard for Mixed soybeans.
[2] In addition to the maximum count limit, stones must exceed 0.1 percent of the sample weight.
[3] Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown substances. The weight of stones is not applicable for total other material.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E6–14719 Filed 9–5–06; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2002–11483; Amendment No. 13–33]

RIN 2120–AI52

Revisions to the Civil Penalty Inflation Adjustment Rule and Tables; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error that appeared in the previous correction to the final rule. The final rule was published in the **Federal Register** on May 16, 2006, (71 FR 28518). The previous correction to the final rule was published in the **Federal Register** on August 16, 2006, (71 FR 47077). This document also amends the regulatory language in Table One as published in the **Federal Register** on August 16, 2006. The May 16, 2006, final rule implements adjustments to certain civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: Effective September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Joyce Redos, Office of the Chief

Counsel, Enforcement Division, AGC–300, telephone (202) 267–3137; facsimile (202) 267–5106; e-mail *joyce.redos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Need for Correction

The correction to the final rule document in the **Federal Register** on August 16, 2006 (71 FR 47077), contains a further error in the preamble with respect to the date the revised civil penalty amounts are to be applied. The previous correction document also introduced two typographical errors in the text of Table One. Specifically, the amendment contained an incomplete citation to 49 U.S.C. 46301(a)(2)(A) and (B) in column two, entry three and dropped a footnote reference in column two, entry 11 to Table One. This publication corrects the error in the preamble and amends the regulatory language.

In the August 16, 2006, **Federal Register** (FR Doc. 06–6953), make the following correction to read as follows:

On page 47077, column 3 in the first line, remove the phrase "as of June 15, 2006." and add in its place the phrase "as of June 16, 2006."

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 13 of Title 14, Code of Federal Regulations, as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

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

Authority: 18 U.S.C. 6002, 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 44718, 44725, 46101–46110, 46301–46316, 46318, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

■ 2. Amend § 13.305 by revising Table 1, entry 3, column 2, and entry 11, column 2, to read as follows:

§ 13.305 Cost of living adjustments of civil monetary penalties.

* * * * *

TABLE 1.—TABLE OF MINIMUM AND MAXIMUM CIVIL MONETARY PENALTY AMOUNTS FOR CERTAIN VIOLATIONS BEFORE DECEMBER 12, 2003, AND FOR HAZARDOUS MATERIALS VIOLATIONS BEFORE AUGUST 10, 2005

United States Code citation	Civil monetary penalty description	Minimum penalty amount	New adjusted minimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law	New or adjusted maximum penalty amount
*	* * * *	*	*	*	*
	Violation under 49 U.S.C. 46301(a)(2)(A) or (B) by a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).				
*	* * * *	*	*	*	*
	Carrying a concealed dangerous weapon.[1]				
*	* * * *	*	*	*	*

[1] FAA prosecutes violations under this section that occurred before February 17, 2002.

* * * * *

Issued in Washington, DC, on August 28, 2006.

Rebecca MacPherson,

Assistant Chief Counsel.

[FR Doc. 06–7357 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE259; Special Conditions No. 23–199–SC]

Special Conditions: AmSafe, Incorporated; Diamond Aircraft Industries, Incorporated, Model DA40 and DA42; Inflatable Three-Point Restraint Safety Belt With an Integrated Airbag Device

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the installation of an AmSafe, Inc., Inflatable Three-Point Restraint Safety Belt with an Integrated Airbag Device on Diamond models DA40 and DA42. These airplanes, as modified by the installation of this Inflatable Safety Belt, will have novel and unusual design features associated with the upper-torso restraint portions of the three-point safety belt, which contains an integrated airbag device. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 29, 2006. Comments must be received on or before October 6, 2006.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration (FAA), Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE259, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE259. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Mark James, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4137, fax 816–329–4090, e-mail *mark.james@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment is

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to CE259." The postcard will be date stamped and returned to the commenter.

Background

On February 13, 2006, AmSafe, Inc., applied for a supplemental type certificate, for the installation of a three-point safety belt restraint system incorporating an inflatable airbag for the pilot, co-pilot, and passenger seats of the Diamond Aircraft Industries, Inc., model DA40 and DA42 airplanes. The Diamond model DA40 is a single engine, four-place airplane, and the model DA42 is a twin engine, four-place airplane.

The inflatable restraint system is a three-point safety belt restraint system consisting of a lap belt and shoulder harness. An inflatable airbag is attached to the shoulder harness. The inflatable portion of the restraint system will rely on sensors to electronically activate the inflator for deployment. The inflatable restraint system will be installed on the pilot, co-pilot, and passenger seats.

If an emergency landing occurs, the airbag will inflate and provide a protective cushion between the occupant's head and the structure within the airplane. This will reduce the potential for head and torso injury. The inflatable restraint behaves in a manner similar to an automotive airbag; however, in this case, the airbag is integrated into the shoulder harness. While airbags and inflatable restraints are standard in the automotive industry, the use of an inflatable three-point restraint system is novel for general aviation operations.

The FAA has determined that this project will be accomplished on the basis of providing the same current level of safety as the Diamond Aircraft Industries, Inc., model DA40 and DA42 occupant restraint systems. The FAA has two primary safety concerns with the installation of airbags or inflatable restraints:

- That they perform properly under foreseeable operating conditions; and
- That they do not perform in a manner or at such times as to impede the pilot's ability to maintain control of the airplane or constitute a hazard to the airplane or occupants.

The latter point has the potential to be the more rigorous of the requirements. An unexpected deployment while conducting the takeoff or landing phases of flight may result in an unsafe condition. The unexpected deployment may either startle the pilot or generate a force sufficient to cause a sudden movement of the control yoke. Either action could result in a loss of control of the airplane, the consequences of which are magnified due to the low operating altitudes during these phases of flight. The FAA has considered this when establishing these special conditions.

The inflatable restraint system relies on sensors to electronically activate the inflator for deployment. These sensors could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of an inadvertent deployment must be considered in establishing the reliability of the system. AmSafe, Inc., must show that the effects of an inadvertent deployment in flight are not a hazard to the airplane or that an inadvertent deployment is extremely improbable. In addition, general aviation aircraft are susceptible to a large amount of cumulative wear and tear on a restraint system. The potential for inadvertent deployment may increase as a result of this cumulative damage. Therefore, the impact of wear and tear on inadvertent deployment must be considered. The effect of this cumulative damage means a life limit must be established for the appropriate system components in the restraint system design.

There are additional factors to be considered to minimize the chances of inadvertent deployment. General aviation airplanes are exposed to a unique operating environment, since the same airplane may be used by both experienced and student pilots. The effect of this environment on inadvertent deployment must be understood. Therefore, qualification testing of the firing hardware/software must consider the following:

- The airplane vibration levels appropriate for a general aviation airplane; and
- The inertial loads that result from typical flight or ground maneuvers, including gusts and hard landings.

Any tendency for the firing mechanism to activate as a result of these loads or acceleration levels is unacceptable.

Other influences on inadvertent deployment include high intensity electromagnetic fields (HIRF) and lightning. Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. To comply with HIRF and lightning requirements, the AmSafe, Inc., inflatable restraint system is considered a critical system, since its inadvertent deployment could have a hazardous effect on the airplane.

Given the level of safety of the current Diamond Aircraft Industries, Inc., DA40 and DA42 occupant restraints, the inflatable restraint system must show that it will offer an equivalent level of protection for an emergency landing. If an inadvertent deployment occurs, the restraint must still be at least as strong as a Technical Standard Order approved belt and shoulder harnesses. There is no requirement for the inflatable portion of the restraint to offer protection during multiple impacts, where more than one impact would require protection.

The inflatable restraint system must deploy and provide protection for each occupant under an emergency landing condition. The seats of the models DA40 and DA42 are certificated to the structural requirements of § 23.562; therefore, the test emergency landing pulses identified in § 23.562 must be used to satisfy this requirement.

A wide range of occupants may use the inflatable restraint; therefore, the protection offered by this restraint should be effective for occupants that range from the fifth percentile female to the ninety-fifth percentile male. Energy absorption must be performed in a consistent manner for this occupant range.

In support of this operational capability, there must be a means to verify the integrity of this system before

each flight. AmSafe, Inc., may establish inspection intervals where they have demonstrated the system to be reliable between these intervals.

An inflatable restraint may be "armed" even though no occupant is using the seat. While there will be means to verify the integrity of the system before flight, it is also prudent to require unoccupied seats with active restraints not constitute a hazard to any occupant. This will protect any individual performing maintenance inside the cockpit while the aircraft is on the ground. The restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

In addition, the design must prevent the inflatable seatbelt from being incorrectly buckled and/or installed such that the airbag would not properly deploy. AmSafe, Inc., may show that such deployment is not hazardous to the occupant and will still provide the required protection.

The cabins of the Diamond model airplanes identified in these special conditions are confined areas, and the FAA is concerned that noxious gasses may accumulate if the airbag deploys. When deployment occurs, either by design or inadvertently, there must not be a release of hazardous quantities of gas or particulate matter into the cockpit.

An inflatable restraint should not increase the risk already associated with fire. Therefore, the inflatable restraint should be protected from the effects of fire to avoid creating an additional hazard by, for example, a rupture of the inflator.

Finally, the airbag is likely to have a large volume displacement, and possibly impede the egress of an occupant. Since the bag deflates to absorb energy, it is likely that the inflatable restraint would be deflated at the time an occupant would attempt egress. However, it is appropriate to specify a time interval after which the inflatable restraint may not impede rapid egress. Ten seconds has been chosen as reasonable time. This time limit will offer a level of protection throughout the impact event.

Type Certification Basis

Under the provisions of § 21.101, AmSafe, Inc., must show that the Diamond model DA40 and DA42, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A47CE (DA40), A57CE (DA42) or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The following models are covered by this special condition:

Diamond DA40

Type Certificate No. A47CE, Revision 6, dated January 12, 2006.

Diamond DA42

Type Certificate No. A57CE, Revision 4, dated June 30, 2006.

For the models listed above, the certification basis also includes all exemptions, if any; equivalent level of safety findings, if any; and special conditions not relevant to the special conditions adopted by this rulemaking action.

If the Administrator determines that the applicable airworthiness regulations (i.e., part 23 as amended) do not contain adequate or appropriate safety standards for the AmSafe, Inc., inflatable restraint as installed on these Diamond Aircraft Industries, Inc., models because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

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

Novel or Unusual Design Features

The Diamond Aircraft Industries, Inc., models DA40 and DA42 will incorporate the following novel or unusual design feature:

The AmSafe, Inc., Three-Point Safety Belt Restraint System incorporating an inflatable airbag for the pilot, co-pilot, and passenger seats. The purpose of the airbag is to reduce the potential for injury in the event of an accident. In a severe impact, an airbag will deploy from one shoulder harness, in a manner similar to an automotive airbag. The airbag will deploy between the head of the occupant and airplane interior structure, which will provide some protection to the head of the occupant. The restraint will rely on sensors to electronically activate the inflator for deployment.

The Code of Federal Regulations state performance criteria for seats and restraints in an objective manner. However, none of these criteria are adequate to address the specific issues raised concerning inflatable restraints. Therefore, the FAA has determined that, in addition to the requirements of part 21 and part 23, special conditions are needed to address the installation of this inflatable restraint.

Accordingly, these special conditions are adopted for the Diamond Aircraft Industries, Inc., models equipped with the AmSafe, Inc., three-point inflatable restraint. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Applicability

As discussed above, these special conditions are applicable to the Diamond Aircraft Industries, Inc., models DA40 and DA42 equipped with the AmSafe, Inc., three-point inflatable restraint system.

Conclusion

This action affects only certain novel or unusual design features on the previously identified Diamond models. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, the substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the delivery of the airplane(s), the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

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

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

The Special Conditions

■ The FAA has determined that this project will be accomplished on the basis of not lowering the current level of safety of the Diamond Aircraft Industries, Inc., models DA40 and DA42 occupant restraint system. Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for these models, as modified by AmSafe, Incorporated.

Inflatable Three-Point Restraint Safety Belt with an Integrated Airbag Device on the Pilot, Co-pilot, and Passenger Seats of the Diamond Aircraft Industries, Inc., Models DA40 and DA42.

1. It must be shown that the inflatable restraint will deploy and provide protection under emergency landing conditions. Compliance will be demonstrated using the dynamic test condition specified in 14 CFR, part 23, § 23.562(b)(2). It is not necessary to account for floor warpage, as required by § 23.562(b)(3), or vertical dynamic loads, as required by § 23.562(b)(1). The means of protection must take into consideration a range of stature from a 5th percentile female to a 95th percentile male. The inflatable restraint must provide a consistent approach to energy absorption throughout that range.

2. The inflatable restraint must provide adequate protection for each occupant. In addition, unoccupied seats that have an active restraint must not constitute a hazard to any occupant.

3. The design must prevent the inflatable restraint from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required protection.

4. It must be shown that the inflatable restraint system is not susceptible to inadvertent deployment as a result of wear and tear or the inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) that are likely to be experienced in service.

5. It must be extremely improbable for an inadvertent deployment of the restraint system to occur, or an inadvertent deployment must not impede the pilot's ability to maintain control of the airplane or cause an unsafe condition (or hazard to the airplane). In addition, a deployed inflatable restraint must be at least as strong as a Technical Standard Order (C114) certificated belt and shoulder harness.

6. It must be shown that deployment of the inflatable restraint system is not hazardous to the occupant or will not result in injuries that could impede rapid egress. This assessment should include occupants whose restraint is loosely fastened.

7. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable. In addition, the restraint must also provide suitable visual warnings that would alert rescue personnel to the presence of an inflatable restraint system.

8. It must be shown that the inflatable restraint will not impede rapid egress of the occupants 10 seconds after its deployment.

9. To comply with HIRF and lightning requirements, the inflatable restraint system is considered a critical system since its deployment could have a hazardous effect on the airplane.

10. It must be shown that the inflatable restraints will not release hazardous quantities of gas or particulate matter into the cabin.

11. The inflatable restraint system installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means to verify the integrity of the inflatable restraint activation system before each flight or it must be demonstrated to reliably operate between inspection intervals.

13. A life limit must be established for appropriate system components.

14. Qualification testing of the internal firing mechanism must be performed at vibration levels appropriate for a general aviation airplane.

Issued in Kansas City, Missouri on August 29, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14750 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25722; Directorate Identifier 2006–NM–141–AD; Amendment 39–14749; AD 2006–18–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–541 and –642 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A340–541 and –642 airplanes. This AD requires a one-time inspection of the anti-stall valve sleeve of the ram air turbine (RAT) for proper installation, determining the part number of the modification plate on the hydraulic pump of the RAT, and follow-on corrective actions if necessary. This AD results from reports of failure of the anti-stall valve on the hydraulic pump of the RAT during scheduled ground tests. We are issuing this AD to prevent failure of the RAT hydraulic pump to supply adequate pressure to activate the RAT, and consequent loss of the RAT as a source of hydraulic and electrical power in an emergency situation.

DATES: This AD becomes effective September 21, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 21, 2006.

We must receive comments on this AD by November 6, 2006.

ADDRESSES: Use one of the following addresses to submit comments 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.
- *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.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France,

for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union, notified us that an unsafe condition may exist on certain Airbus Model A340–541 and –642 airplanes. The EASA advises that operators have reported failure of the anti-stall valve on the hydraulic pump of the ram air turbine (RAT) during scheduled ground tests. Investigation revealed that this failure was due to poor installation of the anti-stall valve sleeve, causing a shift in the anti-stall speed setting and leading to inability to supply adequate pressure to activate the RAT. These conditions, if not corrected, could result in loss of the RAT as a source of hydraulic and electrical power in an emergency situation.

Relevant Service Information

Airbus has issued Service Bulletin A340–29–5010, including Appendix 01, dated October 10, 2005. The service bulletin describes procedures for determining the part number of the modification plate on the hydraulic pump of the ram air turbine (RAT), and follow-on corrective actions. The follow-on corrective actions include a one-time inspection of the anti-stall valve sleeve of the RAT for proper installation after determining the part number of the modification plate on the hydraulic pump of the RAT, reworking the anti-stall valve or replacing the RAT with a new RAT, and doing an operational test of the new RAT. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006–0046, dated February 16, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

The Airbus service bulletin refers to Hamilton Sundstrand Service Bulletin ERPS33T–29–3, dated August 1, 2005, as an additional source of service information for accomplishing the actions.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France 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. As described in FAA Order 8100.14A, "Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness," dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent failure of the RAT hydraulic pump to supply adequate pressure to activate the RAT, and consequent loss of the RAT as a source of hydraulic and electrical power in an emergency situation. This AD requires accomplishing the actions specified in the Airbus service information described previously, except as discussed under "Differences Between the AD and the Airbus Service Bulletin."

Differences Between the AD and the Airbus Service Bulletin

Unlike the procedures described in the service bulletin, the intent of the EASA airworthiness directive referenced in this AD is to mandate the one-time inspection of the anti-stall valve sleeve of the RAT for proper installation before determining the part number of the modification plate on the hydraulic pump of the RAT. If, after beginning the inspection, it is determined that the modification plate is already marked with a 'B' showing that the inspection was accomplished previously, no further action is required by this AD.

The service bulletin specifies returning any removed RAT to Hamilton Sundstrand; however, this AD does not require that action.

Clarification of Inspection Terminology

In this AD, the "inspection" specified in the service bulletin is referred to as a "general visual inspection." We have included the definition for a general visual inspection in a note in the proposed AD.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD would be $80 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA–2006–25722; Directorate Identifier 2006–NM–141–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD 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 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 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 Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System 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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–18–10 Airbus: Amendment 39–14749. Docket No. FAA–2006–25722; Directorate Identifier 2006–NM–141–AD.

Effective Date

(a) This AD becomes effective September 21, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340–541 and –642 airplanes, certificated in any category; equipped with a ram air turbine (RAT) module, Model ERPS33T, part number (P/N) 772722D or 772722E; serial numbers 0001 through 0024 inclusive, and 0101 through 0166 inclusive, having a Parker hydraulic pump with P/N 4217701 or 4217702.

Unsafe Condition

(d) This AD results from reports of failure of the anti-stall valve on the hydraulic pump of the RAT during scheduled ground tests. We are issuing this AD to prevent failure of the RAT hydraulic pump to supply adequate pressure to activate the RAT, and consequent loss of the RAT as a source of hydraulic and electrical power in an emergency situation.

Compliance

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

Inspection/Follow-on Corrective Actions if Necessary

(f) Within 11 months after the effective date of this AD: Do a one-time general visual inspection of the anti-stall valve sleeve of the RAT for proper installation, and determine the P/N of the modification plate on the hydraulic pump of the RAT, by doing all applicable actions, including all applicable follow-on corrective actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–29–5010, dated October 10, 2005. All corrective actions must be done before further flight. Although the service bulletin specifies returning any removed RAT to Hamilton Sundstrand, this AD does not require that action.

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."

Note 2: The Airbus service bulletin refers to Hamilton Sundstrand Service Bulletin ERPS33T–29–3, dated August 1, 2005, as an additional source of service information for accomplishing the actions required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) European Aviation Safety Agency (EASA) airworthiness directive 2006–0046, dated February 16, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A340–29–5010, excluding Appendix 01, dated October 10, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 23, 2006.

Kalene C. Yanamura,

Acting Manager; Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14624 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24585; Directorate Identifier 2004–NM–275–AD; Amendment 39–14743; AD 2006–18–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; Model DC–9–21 Airplanes; Model DC–9–30 Series Airplanes; Model DC–9–41 Airplanes; and Model DC–9–51 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. That AD currently requires a one-time inspection at a certain disconnect panel in the left forward cargo compartment to find contamination of electrical connectors and to determine if a dripshield is installed over the disconnect panel, and corrective actions if necessary. This new AD revises the applicability of the existing AD by removing certain airplanes and adding others. This AD results from a report of electrical arcing that resulted in a fire. We are issuing this AD to prevent contamination of certain electrical connectors, which could cause electrical arcing and consequent fire on the airplane.

DATES: This AD becomes effective October 11, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 11, 2006.

On March 7, 2003 (68 FR 4900, January 31, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin DC9–24A190, Revision 01, excluding Evaluation Form, dated November 21, 2001.

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

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2003–03–08, amendment 39–13032 (68 FR 4900, January 31, 2003). The existing AD applies to certain McDonnell Douglas DC–9–10, DC–9–20, DC–9–30, DC–9–40, and DC–9–50 series airplanes. That NPRM was published in the **Federal Register** on May 1, 2006 (71 FR 25510). That NPRM proposed to continue to require a one-time inspection at a certain disconnect panel in the left forward cargo compartment to find contamination of electrical connectors and to determine if a dripshield is installed over the disconnect panel, and corrective actions if necessary. That NPRM also proposed to revise the applicability of the existing AD to remove certain airplanes and add others.

Comments

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

Request To Clarify Applicability

ABX Air requests that we revise paragraph (h) of this AD to specify that it applies to airplanes equipped with forward lavatories. The commenter states that this change would be consistent with the applicability of AD 2003–03–08. The commenter also states that the change would eliminate the need for requesting an alternative method of compliance (AMOC) for airplanes that have had the forward lavatories removed.

We agree that paragraph (h) applies to airplanes equipped with forward lavatories. We point out that the effectivity of Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004, notes clearly that the service bulletin is applicable only to airplanes with forward lavatories installed. Since we reference Revision 2 in the applicability of this AD, this AD applies to the airplanes identified in Revision 2 and equipped with forward lavatories. However, we have revised paragraph (h) of this AD as proposed by the commenter to provide clarification.

Request To Accept Previous AMOCs

Northwest Airlines (NWA) states that it has accomplished the intent of AD 2003–03–08 on all DC–9 airplanes in its fleet through two AMOCs, which allow use of alternative replacement parts. (The requirements of AD 2003–03–08 (corresponding to paragraph (f) of this AD) apply only to airplanes identified in Boeing Alert Service Bulletin DC9–24A190, Revision 01, dated November 21, 2001.) NWA states that it has inspected and modified several airplanes in accordance with AD 2003–03–08, which are not included in the effectivity of Revision 01 of the service bulletin. NWA further states that paragraph (h), as written in the NPRM, applies to any airplane that is not listed in Revision 01. NWA asserts that any such airplane would be required to accomplish paragraph (h) in accordance with Revision 2 of the service bulletin. Therefore, NWA requests that we revise the NPRM to accept previously granted AMOCs to AD 2003–03–08. As justification, NWA states that this change would allow compliance with Revision 2 (required by paragraph (h) of this AD) without having to apply for an additional AMOC. We infer that NWA would like previous AMOCs to be acceptable for compliance with both paragraphs (f) and (h) of this AD.

We agree that AMOCs approved previously in accordance with AD 2003–03–08 are acceptable for the corresponding provisions of paragraph (f) of this AD. Consequently, we have added a new paragraph (j)(3) to this AD accepting those AMOCs. However, we disagree with the commenter's interpretation that paragraph (h) of this AD applies to any airplane not identified in Revision 01 of the service bulletin. According to paragraph (c) of this AD, this AD applies only to the airplanes identified in Revision 2 of the service bulletin. Therefore, paragraph (h) of this AD applies to the airplanes identified in Revision 2 (and equipped

with forward lavatories), except those on which Revision 01 of the service bulletin has been previously accomplished. Furthermore, it is not our intent to require accomplishment of both Revisions 01 and 2. Therefore, we have added a new paragraph (i) to this AD, which states that accomplishing the actions specified in paragraph (f) of this AD before the effective date of this AD is acceptable for compliance with the requirements of paragraph (h) of this AD. We have reidentified the subsequent paragraphs accordingly.

Conclusion

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

Costs of Compliance

There are about 649 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 2003–03–08)	1	$80	$80	170	$13,600
Inspection (new action)	1	80	80	254	20,320

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13032 (68 FR 4900, January 31, 2003) and by adding the following new airworthiness directive (AD):

2006–18–05 McDonnell Douglas: Amendment 39–14743. Docket No. FAA–2006–24585; Directorate Identifier 2004–NM–275–AD.

Effective Date

(a) This AD becomes effective October 11, 2006.

Affected ADs

(b) This AD supersedes AD 2003–03–08.

Applicability

(c) This AD applies to the McDonnell Douglas airplanes identified in Table 1 of this AD, certificated in any category, as identified in Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004.

TABLE 1.—AFFECTED AIRPLANES

Model
(1) DC–9–14, DC–9–15, and DC–9–15F airplanes.
(2) DC–9–21 airplanes.
(3) DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, and DC–9–34F airplanes.
(4) DC–9–41 airplanes.
(5) DC–9–51 airplanes.

Unsafe Condition

(d) This AD results from a report of electrical arcing that resulted in a fire. We are issuing this AD to prevent contamination of certain electrical connectors, which could cause electrical arcing and consequent fire on the airplane.

Compliance

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

Requirements of AD 2003–03–08

One-Time Inspection and Corrective Actions

(f) For airplanes equipped with forward lavatories, as listed in Boeing Alert Service Bulletin DC9–24A190, Revision 01, dated November 21, 2001: Within 18 months after March 7, 2003 (the effective date of AD 2003–03–08), perform a one-time general visual inspection of the disconnect panel at station Y=237.000 in the left forward cargo compartment to find evidence of contamination (e.g., staining or corrosion) of electrical connectors by blue water, and to determine if a dripshield is installed over the disconnect panel. Do this inspection according to the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A190, Revision 01, excluding Evaluation Form, dated November 21, 2001.

(1) If no evidence of contamination of electrical connectors is found, and a dripshield is installed, no further action is required by this AD.

(2) If any evidence of contamination of any electrical connector is found: Before further flight, remove each affected connector, and install a new or serviceable connector according to the service bulletin.

(3) If no dripshield is installed over the disconnect panel: Before further flight, install a dripshield according to the service bulletin.

Previously Accomplished Inspections and Corrective Actions

(g) Inspections and corrective actions accomplished before March 7, 2003, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–24A190, dated July 31, 2001, are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

New Requirements of This AD

One-Time Inspection and Corrective Actions

(h) For airplanes equipped with forward lavatories, other than those identified in paragraph (f) of this AD: Within 18 months after the effective date of this AD, do the one-time general visual inspection and applicable corrective actions specified in paragraph (f) of this AD, in accordance with Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004. The applicable corrective actions must be done before further flight.

Credit for Previous Accomplishment

(i) For airplanes equipped with forward lavatories, as identified in Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004: Accomplishing the actions specified in paragraph (f) of this AD before the effective date of this AD is acceptable for compliance with the requirements of paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles 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.

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

(3) AMOCs approved previously in accordance with AD 2003–03–08 are approved as AMOCs for the corresponding provisions of paragraph (f) of this AD.

Material Incorporated by Reference

(k) You must use Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004; or Boeing Alert Service Bulletin DC9–24A190, Revision 01, excluding Evaluation Form, dated November 21, 2001, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin DC9–24A190, Revision 2, dated October 12, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On March 7, 2003 (68 FR 4900, January 31, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin DC9–24A190, Revision 01, excluding Evaluation Form, dated November 21, 2001.

(3) Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on August 23, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14627 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22033; Directorate Identifier 2004–NM–218–AD; Amendment 39–14391; AD 2005–24–11]

RIN 2120–AA64

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

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on December 5, 2005 (70 FR 72363). The error resulted in the citation of incorrect part numbers. This AD applies to certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This AD requires repetitive inspections of the spring cartridges of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, and corrective action if necessary, for certain airplanes. This AD also requires final terminating action for all affected airplanes.

DATES: Effective January 9, 2006.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC. This docket number is FAA–2005–22033; the directorate identifier for this docket is 2004–NM–218–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On November 18, 2005, the FAA issued AD 2005–24–11, amendment 39–14391 (70 FR 72363, December 5, 2005), for certain EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. That AD requires repetitive inspections of the spring cartridges of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, and corrective action if necessary. That AD also requires final terminating action for all affected airplanes.

On December 23, 2005, we issued a correction to AD 2005–24–11, (71 FR 231, January 4, 2006), which corrected the reference to the effective date of Brazilian airworthiness directive 2003–01–03R1.

As published, AD 2005–24–11 incorrectly cited the part numbers (P/Ns) of the spring cartridges in several places as P/N KDP2611 and P/N KDP4235. Those P/Ns do not exist. The correct P/Ns should be KPD2611 and KPD4235.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains January 9, 2006.

§ 39.13 [Corrected]

■ In the **Federal Register** of December 5, 2005, on page 72365, paragraph (f) in the first column, paragraph (g) in the

second column, and paragraph (h) in the third column of AD 2005–24–11 are corrected to read as follows:

* * * * *

(f) For Model EMB–135BJ airplanes: Within 30 days after May 14, 2003 (the effective date of AD 2003–09–03), perform a general visual inspection of each spring cartridge of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, in accordance with EMBRAER Service Bulletin 145LEG–27–0006, dated December 9, 2002; Revision 01, dated June 3, 2003; or Revision 02, dated April 12, 2004. Before further flight, replace any discrepant spring cartridge with a new part having the same part number, in accordance with the service bulletin; or replace the spring cartridge, part number (P/N) KPD2611, with a new, improved spring cartridge, P/N KPD4235, as specified in paragraph (h) of this AD. * * *

* * * * *

(g) For airplanes not identified in paragraph (f) of this AD: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, perform a general visual inspection of each spring cartridge of the elevator gust lock system to determine if the lock washer projection correctly fits the slots in the cartridge flange, in accordance with EMBRAER Service Bulletin 145–27–0098, dated December 9, 2002; Change 01, dated June 3, 2003; or Revision 02, dated April 12, 2004. Repeat the inspection at intervals not to exceed 800 flight hours after the initial inspection until the replacement of the spring cartridge, P/N KPD2611, with a new, improved spring cartridge, P/N KPD4235, is done as specified in paragraph (h) of this AD. * * *

* * * * *

New Requirements of This AD

Replacement of Spring Cartridge

(h) Within 5,500 flight hours or 36 months after the effective date of this AD, whichever comes first, replace the spring cartridge, P/N KPD2611, with a new, improved spring cartridge, P/N KPD4235, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–27–0012, Revision 01, dated April 12, 2004 (for Model EMB–135BJ airplanes); or EMBRAER Service Bulletin 145–27–0102, Revision 02, dated January 20, 2005 (for Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes); as applicable. * * *

* * * * *

Issued in Renton, Washington, on August 18, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14687 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22125; Directorate Identifier 2005–NM–130–AD; Amendment 39–14745; AD 2006–18–07]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170 airplanes. This AD requires replacing the very high frequency (VHF) antenna located in position 1 of the fuselage with a new, improved VHF antenna. This AD results from a report of the loss of all voice communications due to a lightning strike damaging all the VHF antennas. We are issuing this AD to prevent the loss of voice communication, which, when combined with the complexity of the national airspace system, could result in reduced flightcrew situational awareness, increased flightcrew workload, and increased risk of human error, and consequent reduced ability to maintain safe flight and landing of the airplane.

DATES: This AD becomes effective October 11, 2006.

The Director of the **Federal Register** approved the incorporation by reference of a certain publication listed in the AD as of October 11, 2006.

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain EMBRAER Model ERJ 170 airplanes. That NPRM was published in the **Federal Register** on August 18, 2005 (70 FR 48500). That NPRM proposed to require replacing the very high frequency (VHF) antenna located in position 1 of the fuselage with a new, improved VHF antenna.

Comments

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

Request for All Very High Frequency (VHF) Antennas To Be Replaced

Air Line Pilots Association (ALPA) requests that all of the VHF antennas on the subject airplanes be replaced with the new, improved antennas. ALPA suggests that, for redundancy purposes, all of the VHF antennas should be replaced because "all" of the VHF antennas were damaged in the event that precipitated the AD.

We do not agree to require replacement of all the VHF communications antennas. Section 25.1316(b) of the Federal Aviation Regulations (FARs) (14 CFR 25.1316) requires that a major aircraft system that, if it failed, would contribute to or cause a condition that would reduce the capability of the airplane or flightcrew to cope with adverse operating conditions must be designed to be able to recover in a timely manner after exposure to lightning. In the incident precipitating this AD, the VHF communications system failed because none of the VHF antennas were able to recover. The newly designed replacement antenna required by this

AD has been through considerable testing and we find that sufficient data exist to demonstrate that it meets the requirements of section 25.1316(b) and will be able to recover function of the VHF communications system following a lightning strike. Therefore, replacing the position 1 VHF communications antenna with the new antenna instead of replacing all of the VHF antennas is sufficient to ensure system recovery in the event of a lightning strike and will adequately address the unsafe condition addressed by this AD. However, operators are free to replace the position 2 and 3 VHF communications antennas with the newly designed antenna at their discretion. We have not changed the AD in this regard.

Request for Review of the Subject Airplane's Ability To Handle Lightning Strikes

ALPA also requests that the FAA look into the subject airplane's ability to adequately and safely handle lightning strikes and static discharges. ALPA gives no justification for this request.

We do not agree. This airplane model design was certificated to the airworthiness standards for lightning protection provided in part 25 of the FARs (14 CFR part 25). The purpose of these standards is to ensure that the operation of the airplane is not adversely affected when the airplane is exposed to lightning. Beyond the event that is the subject of this AD, we are unaware of any other instances of this model airplane being adversely affected by exposure to lightning. We have made no change to the AD in this regard.

Request To Reference Parts Manufacturer Approval (PMA) Parts

Modification and Replacement Parts Association (MARPA) requests that the language in the NPRM be changed to permit installation of PMA equivalent parts. The commenter states that the mandated installation of a certain part number in the NPRM "creates a conflict with 14 CFR Section 21.303."

We do not agree with MARPA's request. We infer that MARPA would like the AD to specify the manufacturer and part number in order to permit installation of any equivalent PMA parts. We also infer that MARPA believes that it is not necessary for an operator to request approval of an alternate method of compliance (AMOC) in order to install an "equivalent" PMA part. Whether an alternative part is "equivalent" in adequately resolving the unsafe condition can only be determined on a case-by-case basis based on a complete understanding of the unsafe condition. We are not currently aware of any such parts. Our policy is that, in order for operators to replace a part with one that is not specified in the AD, they must request an AMOC. This is necessary so that we can make a specific determination that an alternative part is or is not susceptible to the same unsafe condition.

In response to MARPA's statement regarding a "conflict with FAR 21.303," under which the FAA issues PMAs, this statement appears to reflect a misunderstanding of the relationship between ADs and the certification procedural regulations of part 21 of the Federal Aviation Regulations (14 CFR part 21). Those regulations, including section 21.303 of the Federal Aviation Regulations (14 CFR 21.203), are intended to ensure that aeronautical products comply with the applicable airworthiness standards. But ADs are issued when, notwithstanding those procedures, we become aware of unsafe conditions in these products or parts. Therefore, an AD takes precedence over design approvals when we identify an unsafe condition, and mandating installation of a certain part number in an AD is not at variance with section 21.303.

The AD provides a means of compliance for operators to ensure that the identified unsafe condition is addressed appropriately. For an unsafe condition attributable to a part, the AD normally identifies the replacement parts necessary to obtain that compliance. As stated in section 39.7 of the Federal Aviation Regulations (14 CFR 39.7), "Anyone who operates a product that does not meet the requirements of an applicable airworthiness directive is in violation of this section." Unless an operator obtains approval for an AMOC, replacing a part with one not specified by the AD would make the operator subject to an enforcement action and result in a civil penalty. No change to the AD is necessary in this regard.

Request To Address Defective PMA Parts

MARPA notes that safety gaps may occur because original equipment manufacturer (OEM) parts determined to be defective may have been replaced with PMA parts that are also defective. MARPA further states that frequently design defects that arise in OEM parts will also exist in PMA parts, since they may actually only differ in part number, while sharing the same design data. Therefore MARPA requests that the defective parts be identified by manufacturer and part number in the NPRM. MARPA also suggests wording be added to the NPRM that would "embrace any present or future PMA alternatives to either the defective part or the 'new and improved' part."

From these statements, we infer that MARPA would like the NPRM to be revised to cover possible defective PMA alternative parts, rather than just OEM parts listed in the service bulletin, so that those defective PMA parts also are subject to the NPRM. We concur with MARPA's general request that, if we know that an unsafe condition also exists in PMA parts, the AD should address those parts, as well as the original parts. MARPA's remarks are timely in that the Transport Airplane Directorate currently is in the process of reviewing this issue as it applies to transport category airplanes. We acknowledge that there may be other ways of addressing this issue to ensure that unsafe PMA parts are identified and addressed. Once we have thoroughly examined all aspects of this issue, including input from industry, and have made a final determination, we will consider whether our policy regarding addressing PMA parts in ADs needs to be revised. We consider that to delay this AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to the final rule in this regard.

Clarification of AMOC Paragraph

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

Conclusion

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

Costs of Compliance

This AD will affect about 43 airplanes of U.S. registry. The required actions will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost $654. Based on these figures, the estimated cost of the AD for U.S. operators is $33,712, or $784 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–18–07 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–14745. Docket No. FAA–2005–22125; Directorate Identifier 2005–NM–130–AD.

Effective Date

(a) This AD becomes effective October 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, and –100 SU airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 170–23–0005, dated December 29, 2004.

Unsafe Condition

(d) This AD results from a report of the loss of all voice communications due to a lightning strike damaging all the very high frequency (VHF) antennas. We are issuing this AD to prevent the loss of voice communication, which, when combined with the complexity of the national airspace system, could result in reduced flightcrew situational awareness, increased flightcrew workload, and increased risk of human error, and consequent reduced ability to maintain safe flight and landing of the airplane.

Compliance

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

Modification

(f) Within 700 flight hours after the effective date of this AD, replace the VHF antenna located in position 1 of the fuselage with a new, improved VHF antenna in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170–23–0005, dated December 29, 2004.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Brazilian airworthiness directive 2005–04–04, effective April 30, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 170–23–0005, dated December 29, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 23, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14637 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25721; Directorate Identifier 2006–NM–132–AD; Amendment 39–14748; AD 2006–18–09]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model ATP Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all BAe Systems (Operations) Limited Model ATP airplanes. That AD currently requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures; to incorporate new inspections to detect fatigue cracking of certain significant structural items (SSIs); and to revise life limits for certain equipment and various components. This new AD requires

revising the ALS of the ICA to include additional and revised inspections of the fuselage. This AD results from the manufacturer review of fatigue test results that identified additional and revised inspections of the fuselage that are necessary in order to ensure the continued structural integrity of the airplane. We are issuing this AD to detect and correct fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane and consequent rapid decompression of the airplane.

DATES: This AD becomes effective September 21, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 21, 2006.

We must receive comments on this AD by November 6, 2006.

ADDRESSES: Use one of the following addresses to submit comments 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.
- 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.

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thomspon, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On September 6, 2005, we issued AD 2005–19–03, amendment 39–14268 (70 FR 57126, September 30, 2005), for all BAe Systems (Operations) Limited Model ATP airplanes. That AD requires revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. That AD also requires revising the ALS of the Instructions for Continued Airworthiness to incorporate new inspections to detect fatigue cracking of certain significant structural items (SSIs) and to revise life limits for certain equipment and various components. That AD resulted from a determination that existing inspection techniques are not adequate for certain SSIs and by the revision of certain life limits. We issued that AD to detect and correct fatigue cracking of certain structural elements, which could adversely affect the structural integrity of these airplanes.

Actions Since Existing AD Was Issued

Since we issued AD 2005–19–03, the European Aviation Safety Agency (EASA), which is the airworthiness authority for European Union, notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited Model ATP airplanes. The EASA advises that a manufacturer review of fatigue test results identified additional and revised inspections for the fuselage that are necessary in order to ensure the continued structural integrity of the airplane. Inadequate inspection techniques or replacement intervals could result in fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane and consequent rapid decompression of the airplane.

Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin ATP–51–002, dated December 20, 2005. The service bulletin describes structural inspections of the fuselage for cracking, among other actions. The service bulletin describes additional inspections and revises the compliance times of certain existing inspections. The service bulletin also specifies repairs if necessary. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006–0090, dated April 20, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in the United Kingdom 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. As described in FAA Order 8100.14A, "Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness," dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to detect and correct fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane and consequent rapid decompression of the airplane. This AD supersedes AD 2005–19–03 and retains the requirements of the existing AD. This AD also requires revising the ALS of the Instructions for Continued Airworthiness to include new and revised inspections of the fuselage specified in the service bulletin described previously.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

The following table provides the estimated costs to comply with this AD for any affected airplane that might be imported and placed on the U.S. Register in the future.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane
ALS Revisions	1	$80	$80

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA–2006–25721; Directorate Identifier 2006–NM–132–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD 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 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 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 Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System 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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14268 (70 FR 57126, September 30, 2005) and by adding the following new airworthiness directive (AD):

2006–18–09 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14748. Docket No. FAA–2006–25721; Directorate Identifier 2006–NM–132–AD.

Effective Date

(a) This AD becomes effective September 21, 2006.

Affected ADs

(b) This AD supersedes AD 2005–19–03.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model ATP airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new and revised inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD results from the manufacturer review of fatigue test results that identified additional and revised inspections for the fuselage that are necessary in order to ensure the continued structural integrity of the airplane. We are issuing this AD to detect and correct fatigue cracking of certain structural elements, which could result in reduced structural integrity of the airplane and consequent rapid decompression of the airplane.

Compliance

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

Restatement of Requirements of AD 2005–19–03

Airworthiness Limitations Revision Specified in AD 2000–26–10

(f) Within 30 days after February 7, 2001 (the effective date of AD 2000–26–10, amendment 39–12060), revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. One approved method is by incorporating Section 05–00–00, dated August 15, 1997, of the British Aerospace ATP Aircraft Maintenance Manual (AMM), dated October 15, 1999, into the ALS. This section references other

chapters of the AMM. The applicable revision level of the referenced chapters is that in effect on February 7, 2001. Doing the revision specified in paragraph (g) of this AD replaces Chapters 27, 32, 53, and 54 listed in Section 05–10–11 and Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17 that are in effect on February 7, 2001, with Chapters 27, 32, 53, and 54 listed in Section 05–10–11, "Mandatory Life Limitations (Airframe)"; and Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17, "Structurally Significant Items (SSIs)"; both dated July 15, 2004; of the British Aerospace ATP AMM.

Airworthiness Limitations Specified in AD 2005–19–03

(g) Within 30 days after September 28, 2005 (the effective date of AD 2005–19–03), revise the ALS of the Instructions for Continued Airworthiness according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. One approved method is by incorporating the tasks for Chapters 27, 32, 53, and 54 listed in Section 05–10–11, "Mandatory Life Limitations (Airframe)"; and the tasks for Chapters 52, 53, 54, 55, and 57 listed in Section 05–10–17, "Structurally Significant Items (SSIs)"; both dated July 15, 2004; of the British Aerospace ATP AMM; into the ALS. These chapters replace the corresponding chapters in Section 05–00–00, dated August 15, 1997, of the British Aerospace ATP AMM as specified in paragraph (f) of this AD. Doing the revision specified in paragraph (h) of this AD replaces certain Chapter 52 and 53 tasks listed in Section 05–10–17, "Structurally Significant Items (SSIs)", dated July 15, 2004, of the British Aerospace ATP AMM, with the corresponding Chapter 52 and 53 tasks listed BAE Systems (Operations) Limited Service Bulletin ATP–51–002, dated December 20, 2005.

New Requirements of This AD

New and Revised Airworthiness Limitations

(h) Within 30 days after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness by incorporating the new and revised tasks for Chapters 52 and 53 as specified in BAE Systems (Operations) Limited Service Bulletin ATP–51–002, dated December 20, 2005, into the ALS. The revised Chapter 52 and 53 tasks replace the corresponding Chapter 52 and 53 tasks in Section 05–10–17, "Structurally Significant Items (SSIs)", dated July 15, 2004, of the British Aerospace ATP AMM, as specified in paragraph (g) of this AD.

(i) Except as provided by paragraph (k) of this AD: After the actions specified in paragraphs (f), (g), and (h) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraphs (f), (g), and (h) of this AD.

No Reporting Required

(j) Although BAE Systems (Operations) Limited Service Bulletin ATP–51–002, dated December 20, 2005, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(l) British airworthiness directive G–2004–0020, dated August 25, 2004, and European Aviation Safety Agency (EASA) airworthiness directive 2006–0090, dated April 20, 2006, also address the subject of this AD.

Material Incorporated by Reference

(m) You must use BAE Systems (Operations) Limited Service Bulletin ATP–51–002, dated December 20, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on August 23, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14631 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24199; Directorate Identifier 2006–NM–025–AD; Amendment 39–14744; AD 2006–18–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 airplanes. This AD requires revising the Limitations section of the airplane flight manual (AFM); performing a one-time hardness test of certain ribs of the left- and right-hand engine pylons, as applicable, which would terminate the AFM limitations; and performing related corrective actions if necessary. This AD results from a report that certain stainless steel ribs installed in the engine pylon may not have been heat-treated during manufacture, which could result in significantly reduced structural integrity of the pylon. We are issuing this AD to detect and correct reduced structural integrity of the engine pylon, which could lead to separation of the engine from the airplane.

DATES: This AD becomes effective October 11, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 11, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A318, A319, A320, and A321 airplanes. That NPRM was published in the **Federal**

Register on March 27, 2006 (71 FR 15065). That NPRM proposed to require revising the Limitations section of the airplane flight manual (AFM); performing a one-time hardness test of certain ribs of the left- and right-hand engine pylons, as applicable, which would terminate the AFM limitations; and performing related corrective actions if necessary.

Comments

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

Request To Revise Hardness Test Requirement

The Air Transport Association (ATA), on behalf of its member, Northwest Airlines (NWA), requests that we review the requirement for the hardness test specified in the NPRM. NWA states that the NPRM proposes a hardness test before further flight in the case of a hard or overweight landing and further states that French airworthiness directive F–2006–011 R1, dated January 18, 2006, which also addresses the subject of this AD, did not have such a requirement. NWA asserts that a requirement to visually inspect the airplane and pylons for deformation after a hard landing already exists. NWA believes that, as a hardness test requires special tooling and expertise that would not likely be available at most locations where a hard landing might occur, the hardness test is not appropriate and a visual inspection in accordance with maintenance procedures should be accomplished instead.

We agree with NWA that a hardness test after a hard or overweight landing is not necessary. Therefore, we have revised paragraph (g) of the AD to remove the requirement for a hardness test after a hard or overweight landing.

Clarification of Corrective Actions

To prevent possible confusion, we have revised paragraph (h) of the AD to clarify that the specified corrective actions apply to discrepant ribs discovered during the hardness test required by paragraph (g) of the AD.

Supersedure of French Airworthiness Directive

The European Aviation Safety Agency (EASA) has issued airworthiness directive 2006–0136, dated May 22, 2006. The EASA airworthiness directive supersedes French airworthiness directive F–2006–011 R1, dated January 18, 2006, which was referenced in the NPRM as the applicable parallel airworthiness directive. The EASA airworthiness directive contains no new or revised material that affects the technical content of this AD; however, we have revised paragraph (k) of this AD for clarity and traceability of information that applies to this AD.

Conclusion

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

Costs of Compliance

This AD will affect about 112 airplanes of U.S. registry. The required hardness test will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $7,280, 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–18–06 Airbus: Amendment 39–14744. Docket No. FAA–2006–24199; Directorate Identifier 2006–NM–025–AD.

Effective Date

(a) This AD becomes effective October 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318, A319, A320, and A321 airplanes, certificated in any category; having a manufacturer serial number as identified in Airbus All Operators Telex (AOT) A320–54A1015, dated December 14, 2005 (referred to after this paragraph as "the AOT").

Unsafe Condition

(d) This AD results from a report that certain stainless steel ribs installed in the engine pylon may not have been heat-treated during manufacture, which could result in significantly reduced structural integrity of the pylon. We are issuing this AD to detect and correct reduced structural integrity of the engine pylon, which could lead to separation of the engine from the airplane.

Compliance

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

Revise Limitations

(f) Within 10 days after the effective date of this AD, revise the Limitations section of the Airbus A318/319/320/321 Airplane Flight Manual (AFM) to include the following statement. This may be done by inserting a copy of this AD into the AFM.

"In case of flight in severe turbulence, strictly adhere to reduced speeds as defined in Aircraft Flight Manual 4.03.00 P 03."

Note 1: When a statement identical to that specified in paragraph (f) of this AD has been included in the general revisions of the AFM, and the general revisions have been inserted into the AFM, the copy of this AD may be removed from the Limitations section of the AFM unless it has already been removed as specified in paragraph (g) or (h) of this AD.

Hardness Test

(g) Within the compliance time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable: Perform a one-time hardness test to determine the hardness of ribs 8 and 9 of the left- and right-hand engine pylons, in accordance with the instructions of the AOT. If no discrepant rib is found installed on the airplane, the statement specified in paragraph (f) of this AD may be removed from the Limitations section of the AFM.

(1) For airplanes equipped with CFM engines: Within 6 months after the effective date of this AD.

(2) For airplanes equipped with IAE engines: Within 9 months after the effective date of this AD.

Note 2: The AOT refers to Airbus Repair Instruction 546 12081, Issue B, dated January 3, 2006, as an additional source of service information for accomplishing the actions specified by the AOT.

Corrective Actions

(h) For any discrepant rib found during the hardness test specified by paragraph (g) of this AD: Within the compliance time specified in paragraph (h)(1) or (h)(2) of this AD, as applicable, perform applicable corrective actions in accordance with the instructions of the AOT. When corrective actions have been applied to all discrepant ribs found on the airplane, the statement specified in paragraph (f) of this AD may be removed from the Limitations section of the AFM for that airplane.

(1) For airplanes equipped with CFM engines: Within 14 days after accomplishing the hardness test required by paragraph (g) of this AD.

(2) For airplanes equipped with IAE engines: Within 28 days after accomplishing the hardness test required by paragraph (g) of this AD.

No Reporting Requirement

(i) Although the AOT referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(k) European Aviation Safety Agency airworthiness directive 2006–0136, dated May 22, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus All Operators Telex A320–54A1015, dated December 14, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on August 23, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14623 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24667; Directorate Identifier 2006–NM–009–AD; Amendment 39–14746; AD 2006–18–08]

RIN 2120–AA64

Airworthiness Directives; Goodyear Aviation Tires, Part Number 217K22–1, Installed on Various Transport Category Airplanes, Including But Not Limited to Bombardier Model BD–700–1A10 and BD–700–1A11 Airplanes; and Gulfstream Model G–1159, G–1159A, G–1159B, G–IV, GIV–X, GV, and GV–SP Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain aviation tires installed on various transport category airplanes. This AD requires a one-time inspection of the nosewheel tires to determine if they are within a designated serial number range, and replacement if necessary. This AD results from reports of tread separations and tread-area bulges on the nosewheel tires. We are issuing this AD to prevent tread separation from a nosewheel tire during takeoff or landing, which could result in compromised nosewheel steering or ingestion of separated tread by an engine, and consequent reduced controllability of the airplane on the runway or in the air.

DATES: This AD becomes effective October 11, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 11, 2006.

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

Contact Goodyear Tire and Rubber Company, 1144 E. Market Street, Akron, OH 44316–0001, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Nick Miller, Aerospace Engineer, Systems and Flight Test Branch, ACE–117C, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Room 107, Des Plaines, IL 60018; telephone (847) 294–7518; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain aviation tires installed on various transport category airplanes. That NPRM was published in the **Federal Register** on May 3, 2006 (71 FR 25987). That NPRM proposed to require a one-time inspection of the nosewheel

tires to determine if they are within a designated serial number range, and replacement if necessary.

Comments

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

Support for the NPRM

Two commenters, both private citizens, state that they support the NPRM.

Requests To Revise Cost Estimate

The same commenters request that we revise the cost estimate in the NPRM. Both commenters state that in their experience the inspection to determine the serial number of the tire would take much less time than the one hour given for that action in the NPRM. The commenters state that the inspection should take only 10 to 15 minutes. One commenter points out that the removal and replacement of the affected tires would take 1 to 2 hours, depending on the current status of the airplane and other variables.

We partially agree. We agree that the inspection may take less than 1 hour. We disagree that it is necessary to change the cost estimate for the inspection to 10 to 15 minutes rather than 1 hour. We provide these estimates in order to give airplane operators notice of the costs they are likely to incur to do the actions specifically required by the AD. To account for the worst-case cost for each operator, we generally round dollar and hour figures to the next-highest value.

We also disagree with the request to change the cost estimate to include the replacement cost. The replacement is an "on condition" action, and may or may not be required for a given airplane. The cost figures discussed in NPRMs represent only the time necessary to perform the specific actions actually required by the AD; in this case, the inspection. These figures also do not typically include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

We have not changed the final rule in this regard.

Requests To Revise Compliance Time

The same commenters both request that we revise the compliance time for doing the inspection from 60 days to 30 days. The commenters point out that Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005 (referred to in the NPRM as the appropriate source of service information for accomplishing the actions), recommends a compliance time of 14 days, which leads one commenter to believe that this is a serious problem and should be a safety concern for Gulfstream and Bombardier owners. One commenter says that even though the NPRM states that most operators have already complied with the service bulletin, that does not mean it is time to ease up on the others' safety. The other commenter points out that it doesn't take long to inspect the tire and determine the serial number. The commenters both cite serious aviation accidents related to blown tires, and state that the potential serious consequences also justify a shorter compliance time.

We acknowledge the commenters' concerns. However, we do not agree with the request to revise the compliance time. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules. Further, the manufacturer agreed with the proposed compliance time, and now reports that of the 142 affected tires, 25 have been returned in accordance with the instructions in Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5. We also note that Gulfstream reports 90 percent compliance and Bombardier reports 82 percent compliance as of the closing date for comments on the NPRM. In addition, if we were to shorten the compliance time, it would be necessary for us to issue a supplemental NPRM to solicit additional public comment on the new, shorter compliance time. The additional time for comment would add at least 45 days to the total time it will take for the NPRM to become a final rule and thereby add 45 days more before the tires would be required to be inspected. Therefore, we have not changed the final rule in this regard.

Explanation of Additional Service Information

Bombardier has informed us that it has issued two service bulletins that give additional service information for identifying the affected serial numbers and replacing the tires as applicable. We have reviewed and added the following service bulletins to Note 1 of the final rule: Bombardier Alert Service Bulletins A700–32–019 and A700–1A11–32–007, both dated November 2, 2005.

Conclusion

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

Costs of Compliance

There are about 1,282 Gulfstream airplanes and about 104 Bombardier airplanes that use the affected tires in the worldwide fleet. This AD will affect about 1,035 Gulfstream airplanes, and about 104 Bombardier airplanes of U.S. registry. The inspection for the affected serial numbers takes about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $91,120, or $80 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–18–08 Transport Category Airplanes: Amendment 39–14746. Docket No. FAA–2006–24667; Directorate Identifier 2006–NM–009–AD.

Effective Date

(a) This AD becomes effective October 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Goodyear aviation tires, part number 217K22–1, identified in Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005; installed on various transport category airplanes, certificated in any category, including but not limited to Bombardier Model BD–700–1A10 and BD–700–1A11 airplanes, and Gulfstream Model G–1159, G–1159A, G–1159B, G–IV, G–IV–X, G–V, and G–V–SP series airplanes.

Unsafe Condition

(d) This AD results from reports of tread separations and tread-area bulges on the nosewheel tires. We are issuing this AD to prevent tread separation from a nosewheel tire during takeoff or landing, which could result in compromised nosewheel steering or ingestion of separated tread by an engine, and consequent reduced controllability of the airplane on the runway or in the air.

Compliance

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

Inspection To Determine Serial Number (S/N), and Replacement

(f) Within 60 days after the effective date of this AD: Inspect the nosewheel tires to determine whether an affected S/N is installed, in accordance with the Accomplishment Instructions of Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005; and, except as provided by paragraph (g) of this AD, replace any tire with an affected S/N before further flight in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: Bombardier Alert Service Bulletins A700–32–019 and A700–1A11–32–007, both dated November 2, 2005; and the Gulfstream alert customer bulletins listed in Table 1 of this AD are additional sources of service information for identifying the affected serial numbers and replacing the tires as applicable.

TABLE 1.—GULFSTREAM ALERT CUSTOMER BULLETINS

Gulfstream model	Alert customer bulletin	Date
G–1159 (GII) and G–1159B (G–IIB) series airplanes	30	October 12, 2005.
G–1159A (GIII) series airplanes	16	October 12, 2005.
G–IV airplanes	34	October 12, 2005.
G300 airplanes	34	October 12, 2005.
G400 airplanes	34	October 12, 2005.
GIV–X (G350) series airplanes	3	October 12, 2005.
GIV–X (G450) series airplanes	3	October 12, 2005.
GV series airplanes	24	October 12, 2005.
GV–SP (G500) series airplanes	5	October 12, 2005.
GV–SP (G550) series airplanes	5	October 12, 2005.

Special Flight Permit

(g) A special flight permit may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) for one flight to operate the airplane to a location where the requirements of this AD can be accomplished, provided no bulge is present on the tire with the affected S/N.

Parts Installation

(h) After the effective date of this AD, no person may install on any airplane a nosewheel tire that has an S/N in the affected range identified in the Accomplishment Instructions of Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005.

No Parts Return Required

(i) Although Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005, specifies to return tires to the manufacturer, this AD does not require that action.

Actions Accomplished in Accordance With Original Issue of Service Bulletin

(j) Actions done before the effective date of this AD in accordance with Goodyear Aviation Service Bulletin SB–2005–32–004, dated October 11, 2005, are acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Chicago 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.

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

Material Incorporated by Reference

(l) You must use Goodyear Aviation Service Bulletin SB–2005–32–004, Revision 5, dated December 22, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Goodyear Tire and Rubber Company, 1144 E. Market Street, Akron, OH 44316–0001, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on August 23, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–14636 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24243; Airspace Docket No. 06–AWP–11]

RIN 2120–AA66

Revocation of Class D Airspace; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revokes a Class D Airspace at Elko, NV.

DATES: *Effective Date:* 0901 UTC October 26, 2006.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Western Terminal Operations Airspace Specialist, AWP–5420.1, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 18, 2006 (17 FR 40651). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received with the comment period, the regulation will become effective on October 26, 2006, as per the direct final rule. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Los Angeles, California, on August 23, 2006.

Leonard Mobley,

Acting Director, Western Terminal Operations.

[FR Doc. 06–7458 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25252; Airspace Docket No. 06–AWP–12]

RIN 2120–AA66

Revocation of Class E2 Surface Area; Elko, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revokes a Class E2 Surface Area, Elko, NV.

DATES: *Effective Date:* 0901 UTC October 26, 2006.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Western Terminal Operations Airspace Specialist, AWP–5201.1, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 18, 2006 (71 FR 40653). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation will become effective on October 26, 2006, as per that direct final rule. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Los Angeles, California, on August 23, 2006.

Leonard Mobley,

Acting Area Director, Western Terminal Operations.

[FR Doc. 06–7457 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 736

[Docket No. 060818222–6222–01]

RIN 0694–AD83

Amendment to General Order No. 3: Addition of Certain Entities

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security is revising the Export Administration Regulations (EAR) by amending a general order published on June 5, 2006 in the **Federal Register** to add nine additional entities related to Mayrow General Trading. That general order imposed a license requirement for exports and reexports of all items subject to EAR where the transaction involved Mayrow General Trading or entities related, as specified in that general order. The order also prohibited the use of License Exceptions for exports or reexports of any items subject to the EAR involving such entities. This rule will add the following entities related to Mayrow General Trading to that general order: Akbar Ashraf Vaghefi (Germany and the United Arab Emirates (UAE)), Neda Overseas Electronics L.L.C. (UAE), Mostafa Salehi (UAE), IKCO Trading GmbH (Germany), Pyramid Technologies (UAE), A.H. Shamnad (UAE), S. Basheer (UAE), Hamed Athari (UAE), and Mayrow Technics Co. (UAE). In addition, this rule will spell out the full name and provide a pseudonym of one of the previous entities listed in the general order, F.N. Yaghmaei, as Farrokh Nia Yaghmaei, a.k.a., Farrokh Nia Yaghmayi.

DATES: *Effective Date:* This rule is effective September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Michael D. Turner, Director, Office of Export Enforcement, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Phone: (202) 482–1208, x3; E-mail: *rpd2@bis.doc.gov*; Fax: (202) 482–0964.

SUPPLEMENTARY INFORMATION:

Background

The United States Government, including the United States Department of Commerce, Bureau of Industry and Security (BIS), has come into the possession of information giving reason to believe, based on specific and articulable facts, that Akbar Ashraf Vaghefi (Germany and the United Arab

Emirates (UAE)), Neda Overseas Electronics L.L.C. (UAE), Mostafa Salehi (UAE), IKCO Trading GmbH (Germany), Pyramid Technologies (UAE), A.H. Shamnad (UAE), S. Basheer (UAE), Hamed Athari (UAE), and Mayrow Technics Co. (UAE) are affiliated or conducting business with Mayrow General Trading and its related entities, and have acquired or attempted to acquire electronic components and devices capable of being used to construct Improvised Explosive Devices (IEDs). These electronic components and devices ("the commodities") have been, and may continue to be, employed in IEDs or other explosive devices used against Coalition Forces in Iraq and Afghanistan.

In order to protect Coalition Forces operating in Iraq and Afghanistan, the Department of Commerce is amending General Order No. 3, set forth in Supplement No. 1 to part 736, to curtail the named entities' acquisition of the commodities. Pursuant to 15 CFR parts 736 and 744 (2006), that order imposed a license requirement for exports and reexports of all items subject to the Export Administration Regulations (EAR) (15 CFR parts 730 through 774) (2006) to Mayrow General Trading and entities related to or controlled by it. Specifically, this rule adds nine additional entities to General Order No. 3 that are related to Mayrow General Trading as follows:

Akbar Ashraf Vaghefi, Koburgerstr 10, D–10825, Berlin, Germany; and Shop No. 3–4 Sharafia Ahmed Ali Building, Al Nakheel, Deira, Dubai, U.A.E.;

Neda Overseas Electronics L.L.C., No. 308, 3rd Floor, Rafi Center, Al Nakheel, Deira, Dubai, U.A.E.;

Mostafa Salehi, No. 308, 3rd Floor, Rafi Center, Al Nakheel, Deira, Dubai, U.A.E.;

IKCO Trading GmbH, Schadowplatz 5, 40212 Dusseldorf, Germany;

Pyramid Technologies, P.O. Box 42340, Dubai, U.A.E.; and No. 3–4, Sharafia Ahmed Ali Building, Al Nakheel, Deira, Dubai 396, U.A.E.;

A.H. Shamnad, P.O. Box 42340, Dubai, U.A.E.; and No. 3–4 Sharafia Ahmed Ali Building, Al Nakheel, Deira, Dubai 396, U.A.E.;

S. Basheer, No. 3–4 Sharafia Ahmed Ali Building, Al Nakheel, Deira, Dubai 396, U.A.E.;

Hamed Athari, No. 3–4 Sharafia Ahmed Ali Building, Al Nakheel, Deira, Dubai 396, U.A.E.; and

Mayrow Technics Co, No. 3–4 Sharafia Ahmed Ali Building, Al Nakheel, Deira, Dubai 396, U.A.E.

Under this order, a BIS license is required for the export or reexport of any item subject to the EAR to any of the above-named entities, including any transaction in which any of the above-named entities will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items. This order also prohibits the use of License Exceptions (*see* part 740 of the EAR) for exports and reexports of items subject to the EAR involving such entities.

This rule will spell out the full name and provide a pseudonym of one of the entities that was listed in General Order No. 3 published on June 5, 2006. F.N. Yaghmaei will now be listed as Farrokh Nia Yaghmaei, a.k.a., Farrokh Nia Yaghmayi, in the general order to better assist the public.

Consistent with section 6 of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (2000) (the "Act"), a foreign policy report was submitted to Congress on August 29, 2006, notifying Congress of the imposition of a control in the form of a licensing requirement for exports and reexports of all items subject to the EAR destined to the nine additional entities related to Mayrow General Trading that are added to General Order No. 3 with this final rule.

Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 3, 2006 (71 FR 44551 (August 7, 2006)), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) ("IEEPA"). BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are expected to increase slightly as a result of this rule. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, e-mail: *publiccomments@bis.doc.gov*.

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

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

List of Subjects in 15 CFR Part 736

Exports, foreign trade.

■ Accordingly, part 736 of the Export Administration Regulations (15 CFR part 736) is amended as follows:

PART 736—[AMENDED]

■ 1. The authority citation for 15 CFR part 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Public Law 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, May 13, 2004; Notice of October 25, 2005, 70 FR 62027 (October 27, 2005); Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 2. General Order 3 to Supplement No. 1 to part 736, is amended:

■ a. By revising the heading, redesignating the text of paragraph (a) as paragraph (a)(1) and revising the name

"F.N. Yaghmaei" to read "Farrokh Nia Yaghmaei, a.k.a., Farrokh Nia Yaghmayi";

■ b. By adding new paragraph (a)(2); and

■ c. By revising paragraph (b) to read as follows:

Supplement No. 1 to Part 736—General Orders

* * * * *

General Order No. 3 of June 5, 2006, as amended on September 6, 2006; Imposition of license requirement for exports and reexports of items subject to the EAR to Mayrow General Trading and entities related, as follows: Micatic General Trading; Majidco Micro Electronics; Atlinx Electronics; Micro Middle East Electronics; Narinco; Farrokh Nia Yaghmaei, a.k.a., Farrokh Nia Yaghmayi; H. Ghasir; Akbar Ashraf Vaghefi, Neda Overseas Electronics L.L.C., Mostafa Salehi, IKCO Trading GmbH, Pyramid Technologies, A.H. Shamnad, S. Basheer, Hamed Athari, and Mayrow Technics Co. Mayrow General Trading and all entities related are located in Dubai, United Arab Emirates; except for Akbar Ashraf Vaghefi (located in Germany and Dubai, United Arab Emirates) and IKCO Trading GmbH (located in Germany).

(a) *License requirements.* (1) Effective June 5, 2006, a license is required to export or reexport any item subject to the EAR to Mayrow General Trading or entities related, as follows: Micatic General Trading; Majidco Micro Electronics; Atlinx Electronics; Micro Middle East Electronics; Narinco; Farrokh Nia Yaghmaei, a.k.a., Farrokh Nia Yaghmayi; and H. Ghasir. Mayrow General Trading and all entities related described in paragraph (a)(1) are located in Dubai, United Arab Emirates. This license requirement applies with respect to any transaction in which any of the above-named entities will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items.

(2) Effective September 6, 2006, a license is required to export or reexport any item subject to the EAR to these entities related to Mayrow General Trading, as follows: Akbar Ashraf Vaghefi; Neda Overseas Electronics L.L.C.; Mostafa Salehi; IKCO Trading GmbH; Pyramid Technologies; A.H. Shamnad; S. Basheer; Hamed Athari; and Mayrow Technics Co. All entities related to Mayrow General Trading described in paragraph (a)(2) are located in Dubai, United Arab Emirates; except for Akbar Ashraf Vaghefi (located in Germany and Dubai, United Arab Emirates) and IKCO Trading GmbH (located in Germany). This license requirement applies with respect to any transaction in which any of the above-named entities will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items.

(b) *License Exceptions.* No License Exceptions are available for exports or reexports involving the entities described in paragraph *(a)(1) and (a)(2)* of this General Order.

Dated: August 30, 2006.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E6–14738 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 060714193–6193–01]

RIN 0694–AD65

Revisions to the Export Administration Regulations Based on the 2005 Missile Technology Control Regime Plenary Agreements; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendment.

SUMMARY: The Bureau of Industry and Security (BIS) published a final rule in the **Federal Register** on Monday, July 31, 2006 (71 FR 43043) that amended the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the September 2005 Plenary in Madrid, Spain. The July 31, 2006, final rule contained an error in the amendatory language for ECCN 9A120. This document corrects that error by revising that section.

DATES: *Effective Date:* This rule is effective: July 31, 2006.

ADDRESSES: Although this is a final rule, comments are welcome and should be sent to *publiccomments@bis.doc.gov*, fax (202) 482–3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694–AD65 in all comments, and in the subject line of e-mail comments. Comments on the collection of information should be sent to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Telephone (202) 482–2440, for technical or Missile Technology Control Regime related questions contact Michael E. Rithmire, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–6105.

SUPPLEMENTARY INFORMATION:

Background

This document corrects an inadvertent error in the final rule that was published by the Bureau of Industry and Security (BIS) on July 31, 2006 (71 FR 43043). In the July 31, 2006, final rule, the amendatory instruction for ECCN 9A120 did not specify that the heading of the ECCN should be revised as set forth in the regulatory text for that ECCN. The regulatory text in the July 31, 2006 final rule contained the following heading for ECCN 9A120: "Complete unmanned aerial vehicles, not specified in 9A012, having all of the following:" This document corrects ECCN 9A120 by revising the heading to include the phrase "not specified in 9A012, having all of the following:".

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 3, 2006, 71 FR 44551 (August 7, 2006), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

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

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

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

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

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 774 of the Export Administration Regulations (15 CFR parts 730–799) is corrected by making the following correcting amendment:

PART 774—[CORRECTED]

■ 1. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A120 is amended by revising the heading to read as follows:

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

* * * * *

9A120 Complete unmanned aerial vehicles, not specified in 9A012, having all of the following:

* * * * *

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. E6–14739 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Amprolium

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial Ltd. The supplemental NADA provides for formulation of Type C medicated calf feeds containing amprolium used for the prevention and treatment of coccidiosis at a broader range of concentrations.

DATES: This rule is effective September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed a supplement to NADA 12–350 for CORID (amprolium) Type A Medicated Article 25%. The supplemental NADA provides for formulation of Type C medicated calf feeds used for the prevention and treatment of coccidiosis at a broader range of concentrations. The supplemental NADA is approved as of July 19, 2006, and 21 CFR 558.55 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Revise paragraph (d)(1) of § 558.55 to read as follows:

§ 558.55 Amprolium.

* * * * *

(d) * * *

(1) *Cattle.* It is used as follows:

Amprolium in Grams per Ton	Indications for Use	Limitations	Sponsor
(i) 113.5 to 11, 350; to provide 5 milligrams (mg) per kilogram of body weight per day.	Calves: As an aid in the prevention of coccidiosis caused by *Eimeria bovis* and *E. zurnii*.	Top-dress on or mix in the daily ration. Feed for 21 days during periods of exposure or when experience indicates that coccidiosis is likely to be a hazard; as sole source of amprolium. Withdraw 24 hours before slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.	050604
(ii) 113.5 to 11, 350; to provide 10 mg per kilogram of body weight per day.	Calves: As an aid in the treatment of coccidiosis caused by *Eimeria bovis* and *E. zurnii*.	Top-dress on or mix in the daily ration. Feed for 5 days; as sole source of amprolium. Withdraw 24 hours before slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. For a satisfactory diagnosis, a microscopic examination of the feces should be done by a veterinarian or diagnostic laboratory before treatment; when treating outbreaks, the drug should be administered promptly after diagnosis is determined.	050604

* * * * *

Dated: August 22, 2006.

Steven D. Vaughn,

Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E6–14673 Filed 9–5–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9285]

RIN 1545–BB43

Nonaccrual-Experience Method of Accounting Under Section 448(d)(5)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the use of a nonaccrual-experience method of accounting by taxpayers using an accrual method of accounting and performing services. The final regulations reflect amendments under the Job Creation and Worker Assistance Act of 2002. The final regulations affect qualifying taxpayers that want to adopt, change to, or change a nonaccrual-experience method of accounting under section 448(d)(5) of the Internal Revenue Code (Code).

DATES: *Effective Date:* These regulations are effective September 6, 2006.

Applicability Date: These regulations are applicable for taxable years ending on or after August 31, 2006.

Comment Date: Written comments must be received by January 4, 2007. These regulations require that a taxpayer's nonaccrual-experience method must be self-tested against the taxpayer's actual experience to determine whether the nonaccrual-experience method clearly reflects the taxpayer's experience. The determination of actual experience is reserved in these regulations. Comments are requested concerning how to determine actual experience for purposes of timely performing self-testing. Send submissions to: CC:PA:LPD:PR (REG–141402–02), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Taxpayers also may submit comments electronically to the IRS internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, W. Thomas McElroy, Jr., (202) 622–4970; concerning submission of comments, Kelly Banks, (202) 622–0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1855.

The collection of information in these final regulations is in § 1.448–2(d)(8) and (e)(5). This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses, deductions, or credits from the taxpayer's use of the nonaccrual-experience method of accounting. The collection of information is required to obtain a benefit.

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 control number.

The estimated annual burden per respondent is 3 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books and 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.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 448(d)(5). Section 448(d)(5) was enacted by section 801 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) and was amended by section 403 of the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21) (JCWA), effective for taxable years ending after March 9, 2002. On September 4, 2003, the IRS and Treasury Department published in the **Federal Register** (68 FR 52543) proposed amendments to the regulations under section 448(d) by cross-reference to temporary regulations (REG–141402–02) and temporary regulations (68 FR 52496) (TD 9090) (collectively, the 2003 regulations) relating to the limitation on the use of the nonaccrual-experience method of accounting under section 448(d)(5). A public hearing was held on December 10, 2003. Written and electronic comments responding to the proposed regulations were received. After consideration of all of the comments, the proposed regulations are adopted as revised by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

Explanation of Provisions and Revisions and Summary of Comments

1. Overview

These final regulations generally follow the rules in the 2003 regulations. The final regulations include the four safe harbor nonaccrual-experience methods provided in the 2003 regulations, but those methods have been modified to provide more flexibility. Unlike the 2003 regulations, the final regulations do not require as a general rule that a taxpayer's nonaccrual-experience method be tested against one of the safe harbor nonaccrual-experience methods. Instead, the final regulations adopt, with modifications, the general rule from the 2003 regulations as a fifth safe harbor. The final regulations also adopt a new general rule that requires a taxpayer's nonaccrual-experience method be tested against actual experience unless the taxpayer has adopted one of the five safe harbor methods. These final regulations apply to taxable years ending on or after August 31, 2006.

Certain portions of the 2003 regulations have been removed or incorporated into other paragraphs of the final regulations. Section 1.448–2T(d) regarding certain receivables for which the nonaccrual-experience method is not allowed has been combined with § 1.448–2(c) in the final regulations. Special rules in various parts of the 2003 regulations such as § 1.448–2T(e)(2)(ii) and (iii), 1.448–2T(e)(3)(iii), 1.448–2T(e)(4)(ii) and (iii), and 1.448–2T(e)(5)(ii) and (iii), have been combined with the special rules in § 1.448–2T(e)(7) and are now in § 1.448–2(b), (c), and (d) of the final regulations. Most of § 1.448–2T(g), (h), and (j) of the 2003 regulations relating to methods of accounting and audit protection have been removed. The IRS and Treasury Department intend to issue administrative guidance that will contain procedures for certain changes in a nonaccrual-experience method of accounting. The general rule that a nonaccrual-experience method is a method of accounting to which sections 446 and 481 apply has been moved to § 1.448–2(b).

Other portions of the 2003 regulations have been moved to a new definitions and special rules paragraph in § 1.448–2(c) of the final regulations. Section 1.448–2T(d) regarding accounts receivable is included in a definition of accounts receivable in § 1.448–2(c)(1) of the final regulations. Other terms in the definitions paragraph include applicable period, bad debts, charge-offs, determination date, recoveries, and uncollectible amount. The final regulations incorporate these definitions, as appropriate, throughout. For example, in the 2003 regulations the four safe harbor methods include bad debts in the numerator; however, safe harbor 2 did not refer to bad debts, but instead described them as "accounts receivable actually determined to be uncollectible and charged off * * *" These descriptions should not be interpreted differently. Therefore, the final regulations use the defined term *bad debts* in each numerator. Finally, the examples are changed to conform to other changes within the final regulations.

2. Self-Testing Requirement

The 2003 regulations provide that a taxpayer may use any nonaccrual-experience method of accounting, provided the taxpayer's method meets the self-test requirements. The self-testing in the 2003 regulations requires a taxpayer to compare its proposed nonaccrual-experience method with one of the four safe harbor methods to determine whether the taxpayer's proposed method clearly reflects experience. Self-testing is required in the first taxable year to determine whether the proposed method is allowed (first-year self-testing requirement) and, if allowed, self-testing is required every three taxable years thereafter (three-year self-testing requirement). The final regulations provide, as a general rule, that a taxpayer may use any nonaccrual-experience method of accounting that clearly reflects the taxpayer's experience. The final regulations provide that taxpayers must self-test against the taxpayer's actual experience to determine whether a method clearly reflects the taxpayer's experience unless the taxpayer has adopted one of the five safe harbor methods. The final regulations reserve on the definition of actual experience.

a. Appropriateness of Self-Testing Requirement

Many commentators suggested that taxpayers should not be required to incur additional expenses to develop a separate system for performing the self-test, noting that it would be burdensome and impractical for the majority of taxpayers using an alternative nonaccrual-experience method to conduct the self-test due to the limitations of their existing automated recordkeeping systems. One commentator suggested that the self-test was outside the scope of the JCWA and legislative intent. These commentators all recommended that the final regulations omit the self-testing requirement.

The JCWA provides that "[a] taxpayer may adopt, or * * * change to, a computation or formula that clearly reflects the taxpayer's experience," and that "[a] request [to change] shall be approved if such computation or formula clearly reflects the taxpayer's experience." Public Law 107–147, section 403(a). Taxpayers and the IRS must be able to determine whether a nonaccrual-experience method clearly reflects the taxpayer's experience. The Secretary has broad authority to determine whether a method of accounting clearly reflects the taxpayer's income. A self-testing requirement is consistent with the statute, because it is the manner by which taxpayers and the IRS determine whether a nonaccrual-experience method clearly reflects the taxpayer's experience, and thus, clearly reflects the taxpayer's income. Taxpayers must be able to show that a nonaccrual-experience method clearly reflects experience prior to adopting or changing to the method. The requirement to self-test provides an objective standard for making the determination. Therefore, the final regulations do not adopt the

recommendation to omit a self-testing requirement and retain the rule that a taxpayer must maintain books and records sufficient to prove that the taxpayer's nonaccrual-experience method clearly reflects its experience for the taxable year of the exclusion.

b. Standard for Comparison

Commentators stated that the self-testing requirements do not allow taxpayers the opportunity to demonstrate that a proposed method clearly reflects their experience, because under the 2003 regulations all methods must be compared to one of the safe harbors. The commentators stated that none of the safe harbors reflect actual experience, because all of the safe harbors are moving averages rather than a comparison of the estimated uncollectible amount for a taxable year under the taxpayer's nonaccrual-experience method to the actual collection experience of that taxable year's accounts receivable. Thus, the commentators stated, the safe harbors may or may not reflect actual experience as well as the proposed method.

The final regulations modify the self-testing requirements in response to these comments and eliminate the requirement in the 2003 regulations that a taxpayer's nonaccrual-experience method must be tested against one of the four safe harbor methods. The final regulations require that the taxpayer's nonaccrual-experience method must be tested against the taxpayer's actual experience, unless the taxpayer is using one of the safe harbor nonaccrual-experience methods, which are deemed to clearly reflect experience.

For taxpayers and the IRS to implement and administer the nonaccrual-experience method, the determination of actual experience is necessary. Although commentators stated that taxpayers should be allowed to use hindsight and that actual experience would require the use of data reflecting the portion of the subject accounts receivable that remain uncollectible, the commentators did not elaborate regarding what "remain uncollectible" means, nor did the commentators set the date at which accounts receivable "remain uncollectible." The determination and proof of actual experience generally is a simple matter for taxpayers whose collection process with respect to the subject receivables is complete by the time the Federal income tax return is filed. The collection cycle for some taxpayers, however, may routinely span several taxable years. The commentators did not elaborate how such a factual determination could be made prior to filing the Federal income tax return for the applicable taxable year (or alternatively, prior to filing the method change request for the applicable taxable year) in cases in which a taxpayer's collection cycle for the receivables goes beyond the date for the filing of the return (or method change). For taxpayers with a longer collection process, the determination of the final actual experience is not possible by the time the Federal income tax return is filed, and may continue to be incomplete upon examination by the IRS, if the taxpayer's collection process with respect to receivables is still in process. Additionally, it is possible that accounts receivable written off in one taxable year may be recovered several taxable years later, even for taxpayers whose average collection cycle is short. Therefore, the final regulations reserve the determination of actual experience.

The IRS and Treasury Department anticipate providing future guidance that may change or restrict the rules for self-testing and may address the determination of actual experience. In the meantime, taxpayers may request advance consent to use a method other than a safe harbor method, but in the request taxpayers must establish to the satisfaction of the Commissioner how the determination of actual experience is made. Comments are requested concerning how to determine actual experience. Specifically, the IRS and Treasury Department seek comments on how the use of hindsight data can be made administrable. For example, how will the IRS National Office have the necessary data furnished with the application for change in method of accounting, and how will the taxpayer be able to timely perform the self-testing? In particular, should one, fixed determination date be used as a cut-off for all information included in the determination of actual experience? What facts and circumstances, known by the filing deadline for a change in method of accounting and the filing deadline for an original Federal income tax return, can a taxpayer and the IRS rely on to determine the taxpayer's actual experience for purposes of the first-year self-testing requirements for the application for change in method of accounting and for purposes of the three-year self-testing requirements for the filing of the Federal income tax return? For a taxpayer that is applying to adopt or change to a nonaccrual-experience method of accounting, should the taxpayer be allowed to rely on the results under the proposed method for the current taxable year compared to actual experience for old taxable years rather than a comparison of the results under the proposed method for the current taxable year compared to actual experience for the current taxable year at the time of filing, provided the taxpayer can demonstrate that there is not a change in the type of a substantial portion of the outstanding accounts receivable such that the risk of loss is substantially decreased? What standards should apply to a taxpayer who has had a change in the type of a substantial portion of the outstanding accounts receivable? If a taxpayer's business has changed in a manner that impacts a substantial portion of its outstanding accounts receivable, the taxpayer's historical data for its receivables could lose much of their relevance in determining the taxpayer's current nonaccrual experience.

c. Safe Harbor Comparison Method

The final regulations retain a modified version of the self-test from the 2003 regulations, which required the comparison of a taxpayer's method against one of the safe harbors. The safe harbor comparison method in the final regulations is used in conjunction with the fifth safe harbor nonaccrual-experience method, which allows a taxpayer to use any nonaccrual-experience method provided the method meets the safe harbor comparison method of self-testing. The safe harbor comparison method provided in the final regulations allows a taxpayer to compare the taxpayer's method against any of the safe harbors 1 through 4 during any self-testing period, rather than requiring the safe harbor chosen for comparison to be treated as a method of accounting. Because any of the safe harbors 1 through 4 are deemed to clearly reflect experience, a taxpayer should be able to compare its method against any of the safe harbors 1 through 4 to determine whether its method clearly reflects experience. The IRS and Treasury Department anticipate that the procedures for changes in method of accounting to use the new safe harbor nonaccrual-experience method will be provided in administrative guidance, and that these changes will be made with automatic consent.

d. Methods That Do Not Clearly Reflect Experience

The 2003 regulations provide, as part of the three-year self-test requirement, that if the taxpayer's cumulative alternative nonaccrual-experience amount excluded from income during the test period exceeds the taxpayer's cumulative safe harbor nonaccrual-experience amount, the taxpayer must

recapture the excess into income in the third taxable year of the three-year self-test. The IRS and Treasury Department intended this recapture provision to allow minor variances or fluctuations produced by the taxpayer's nonaccrual-experience method without prohibiting continued use of the method. However, when the taxpayer's nonaccrual-experience method produces results that are more than minor variations or fluctuations from the three-year self-test amounts, the method does not clearly reflect the taxpayer's experience. The recapture provision addresses situations in which the taxpayer's nonaccrual-experience method generally clearly reflects experience, but the taxpayer has an anomalous taxable year in which the method does not clearly reflect experience. However, methods may consistently provide large distortions from the taxpayer's actual experience in future taxable years despite meeting the requirements of the first-year self-test. Consequently, the final regulations include a limit in the three-year self-testing provisions that, if exceeded, deems the taxpayer's nonaccrual-experience method to not clearly reflect the taxpayer's experience. Because the taxpayer must recapture the difference between the uncollectible amount under the taxpayer's nonaccrual-experience method and the taxpayer's actual experience, a change from the taxpayer's nonaccrual-experience method to a permissible method in the subsequent taxable year does not require a section 481(a) adjustment and is made on a cut-off basis.

Additionally, to provide transparency, the IRS and Treasury Department intend to provide in future guidance descriptions of methods and characteristics of methods combined with specific taxpayer circumstances that do not clearly reflect experience.

e. Other

Commentators suggested that the self-test was not administrable in the context of consolidated groups. The IRS and Treasury Department believe that the final regulations do not impose more burden than any other method of accounting in the context of a consolidated group. Generally, methods of accounting, including the nonaccrual-experience method with its self-testing requirement, are adopted and applied separately by each entity within the consolidated group (or to separate trades or businesses within an entity), not at the consolidated group level.

3. Safe Harbor Methods

The 2003 regulations have four safe harbors: Safe harbor 1 (the six-year moving average method), safe harbor 2 (the actual experience method), safe harbor 3 (the modified Black Motor method), and safe harbor 4 (the modified moving average method). Comments were received regarding safe harbors 1, 2, and 4. No comments were received regarding safe harbor 3.

a. General Issues

Commentators questioned the need to impose different time periods for different safe harbor methods. For example, in the 2003 regulations, safe harbors 1, 3 and 4 are based on a six-year period (the current taxable year and the five immediately preceding taxable years), whereas safe harbor 2 is based on a three year period (the current taxable year and the two immediately preceding taxable years). These commentators recommended that, for consistency, the safe harbor methods should permit taxpayers to compute the uncollectible amounts using a period consisting of the current taxable year and no fewer than the two immediately preceding taxable years and no more than the five immediately preceding taxable years.

Providing options among the safe harbors, including those with different time periods, is consistent with legislative intent to provide taxpayers "with alternative computations or formulas that taxpayers may rely upon." Different taxpayers may choose different methods with different time periods based on their individual circumstances and experience. The final regulations allow taxpayers flexibility to choose a period of at least three taxable years, but not more than six taxable years (applicable period), for purposes of the computations in each of the safe harbors. The taxable years included in the applicable period must be the most recent (which may or may not include the current taxable year, as applicable) and must be consecutive.

Additionally, commentators stated that including the current taxable year in computations can cause difficulties when preparing computations for estimated taxes. Therefore, the final regulations allow taxpayers flexibility with regard to whether the current taxable year is included in the applicable period. The choice of which taxable years and how many are included in the applicable period is part of the taxpayer's method of accounting under a safe harbor, and can be changed only with the consent of the Commissioner. Taxpayers making such a change may not have all the historical data necessary to compute a section 481(a) adjustment. Therefore, the final regulations provide that the change is done on a cut-off basis rather than with a section 481(a) adjustment.

Finally, some commentators reiterated their earlier suggestion that the Black Motor formula should be permitted as an additional safe harbor method. The IRS and Treasury Department continue to conclude that the Black Motor formula should not be provided as an additional safe harbor method because the formula overstates the uncollectible amount in many circumstances. The final regulations add a fifth safe harbor, which, as discussed above, allows taxpayers to use any alternative nonaccrual-experience method provided the method meets the requirements of the safe harbor comparison method under the self-testing requirements. The IRS and Treasury Department may provide additional safe harbors through future published guidance. In addition, if a taxpayer does not wish to rely on one of the safe harbors, the final regulations provide that a taxpayer may use any other alternative nonaccrual-experience method provided the method clearly reflects its experience and the taxpayer requests and receives consent from the Commissioner to use such method.

Commentators requested that the regulations specifically include a statement that unintentional or immaterial variances will not cause a taxpayer to be changed to the specific charge-off method. As discussed in the preamble to the 2003 regulations, the IRS and Treasury Department do not contemplate that a taxpayer be changed to the specific charge-off method due to unintentional or immaterial variances, especially if a taxpayer is disadvantaged by the variances. Such a rule is unnecessary, particularly with the flexibility added to each of the safe harbors

b. Safe Harbor 1—Revenue-Based Moving Average Method

Safe harbor 1 in the 2003 regulations was referred to as the six-year moving average method. It is renamed the revenue-based moving average method in the final regulations to reflect the flexibility to choose between three to six taxable years for the applicable period. The final regulations provide that the revenue-based moving average percentage of safe harbor 1 (the ratio of net write-offs for the applicable period over accounts receivable earned over the same applicable period) is multiplied by a taxpayer's accounts receivable balance at the end of the taxable year to determine the taxpayer's nonaccrual-experience amount.

A commentator suggested that a safe harbor method should be added that

would modify safe harbor 1 to multiply the revenue-based moving average percentage by a taxpayer's total billings (accounts receivable earned during the taxable year in lieu of its accounts receivable balance at the end of the taxable year). The commentator suggested that this new safe harbor would provide symmetry between the denominator of the revenue-based moving average percentage and the amount against which the revenue-based moving average percentage is multiplied.

The final regulations do not adopt this recommendation. The IRS and Treasury Department previously analyzed the effects of multiplying the revenue-based moving average percentage by the total billings during the taxable year and determined that this computation overstates that portion of the taxpayer's year-end accounts receivable balance that will not be collected. The existing formula is the method provided in former § 1.448–2T(e)(2), as contained in TD 8194, 53 FR 12513 (1988). Although the denominator and multiplicand are not symmetrical, the method accurately reflects the year-end receivables that will not be collected for taxpayers with a short collection cycle.

c. Safe Harbor 2—Actual Experience Method

Under safe harbor 2 of the 2003 regulations, the taxpayer's adjusted nonaccrual-experience amount is determined by tracking the receivables in the taxpayer's accounts receivable balance at the beginning of the current taxable year to determine the dollar amount of the accounts receivable actually determined to be uncollectible and charged off and not recovered or determined to be collectible by the determination date. The determination date is the date selected by the taxpayer for the taxable year for purposes of safe harbor 2, and may not be later than the earlier of the due date, including extensions, for filing the taxpayer's Federal income tax return for that taxable year or the date on which the taxpayer timely files the return for that taxable year. Under Option A of safe harbor 2, the computation is repeated for the taxpayer's accounts receivable balance at the beginning of each of the two immediately preceding taxable years. Under Option B of safe harbor 2, taxpayers that do not have the information necessary to compute a three-year moving average in the first taxable year the method is used are allowed to transition into the method year-by-year. The total of the amounts determined to be uncollectible is divided by the total beginning accounts receivable balance for those taxable years used in the computation to determine the taxpayer's three-year (Option A), or up to three-year (Option B), moving average percentage. This percentage is then multiplied by the taxpayer's current year-end accounts receivable balance to arrive at the taxpayer's actual nonaccrual-experience amount. The taxpayer's actual nonaccrual-experience amount is then multiplied by 1.05 to determine the taxpayer's adjusted nonaccrual-experience amount.

As discussed above, the final regulations allow flexibility in the applicable period used in safe harbor 2. Additionally, because the final regulations provide definitions of terms used throughout the regulations for consistency, the terms used to describe the safe harbor 2 formula were changed to conform to the definitions in the final regulations. Although the description of the method may look as though it has changed substantially, the safe harbor 2 method is not intended to operate differently than the 2003 regulations, other than the flexibility in the applicable period and, as discussed below, the flexibility in the determination dates and in tracing recoveries.

Some commentators requested clarification as to whether safe harbor 2 is based on a computation that takes into account all known information arising both before and after the determination date. The commentators suggested that the 2003 regulations may be interpreted as taking into account only all known information arising on or before determination dates for previous taxable years involved in the computation.

The computation in safe harbor 2, Option A, in the final regulations, contemplates consideration of all known information arising on or before the determination date for the current taxable year, including beginning accounts receivable balances, charge-offs and recoveries, with respect to all taxable years included in the computation. For example, if an account receivable of a calendar year taxpayer exists on January 1, 2006, and is charged off as a bad debt on December 15, 2007, the bad debt should be included in the computation in the taxable year it is charged off and every subsequent taxable year for as long as the 2006 beginning of the year accounts receivable balance is part of the computation under this method. Consequently, the final regulations clarify that all known information arising on or before the determination date for the current taxable year, with respect to the taxable years included in the computation, should be considered.

In the 2003 regulations, Option B allows a taxpayer to transition into the actual experience safe harbor method. The final regulations allow a new taxpayer with no beginning accounts receivable to transition under either Option A or Option B (*see* § 1.448–2(d)(4) of the final regulations). Option B in the final regulations differs from Option A in that it allows a taxpayer to use multiple determination dates (one for each taxable year of the applicable period) instead of one determination date. Therefore, under Option B in the final regulations, a taxpayer has a choice of the applicable period, three to six taxable years, and the taxpayer uses separate determination dates for each taxable year in the applicable period. That is, a taxpayer must use bad debts sustained by the separate determination date of each taxable year during the applicable period rather than bad debts sustained by the determination date of the current taxable year. The determination date used for each taxable year must be the determination date originally used for each taxable year at the time the uncollectible amount for that taxable year was computed. For example, if an account receivable of a calendar year taxpayer exists on January 1, 2006, and is charged off as a bad debt on December 15, 2007, and the determination date for the 2006 taxable year is September 1, 2007, the bad debt would never be included in the computation because it is charged off after the 2006 taxable year determination date. This method was requested by commentators to reduce the burden of having to update the total bad debts for a particular taxable year with every future computation that included that taxable year.

Other commentators requested clarification as to whether the determination date used in safe harbor 2 may shift from year to year. These commentators recommended that the final regulations confirm that a taxpayer may use a different determination date each taxable year, and that a change of determination date is not a change in method of accounting. Safe harbor 2 contemplates that a taxpayer may file its Federal income tax return at different times from year to year, and that the choice of a determination date used in the computation is not a method of accounting. However, once a determination date is selected and used for a particular taxable year, it may not be changed for that taxable year. Therefore, the final regulations clarify that the determination date may be different from year to year, and that a

change in the determination date is not a change in method of accounting.

Under Option B of safe harbor 2, the 2003 regulations provide that a newly formed taxpayer that chooses Option B and does not have any accounts receivable upon formation will not be able to exclude any portion of its year-end accounts receivable from income for its first taxable year because the taxpayer does not have any accounts receivable on the first day of the taxable year that can be tracked. Some commentators recommended that the final regulations either permit newly formed taxpayers using Option B to exclude a portion of their year-end accounts receivable balance, or in the alternative, clarify the rules for adopting this safe harbor in the taxpayer's first taxable year in order to eliminate the administrative burden of filing Form 3115, "Application for Change in Accounting Method," in the succeeding taxable year. The final regulations retain this special rule in § 1.448–(d)(4) for both safe harbor 2 and safe harbor 4, because the methods require a beginning accounts receivable balance to compute the uncollectible amount. Use of another method in the first taxable year may not clearly reflect experience. The final regulations clarify that the taxpayer must begin creating its moving average in its second taxable year by tracking the accounts receivable as of the first day of its second taxable year. The use of one of the safe harbor nonaccrual-experience methods of accounting described in paragraph (f)(2), (f)(4), or (f)(5), if applicable, of the final regulations in a taxpayer's second taxable year in this situation is not a change in method of accounting. Although the taxpayer must maintain the books and records necessary to perform the computations under the adopted safe harbor nonaccrual-experience method, the taxpayer is not required to affirmatively elect the method on its Federal income tax return for its first taxable year.

Commentators requested that safe harbor 2 be modified to permit taxpayers to use any reasonable method to determine recoveries. In response to commentators' concerns about whether taxpayers could use assumptions regarding recoveries rather than specifically trace, the preamble to the 2003 regulations stated that the IRS and Treasury Department do not intend that a taxpayer be changed to the specific charge-off method due to unintentional and/or immaterial variances, especially if the taxpayer is disadvantaged by such variances. Some commentators believe that despite the preamble, the 2003 regulations may require taxpayers to specifically trace 100% of recoveries. The IRS and Treasury Department did not intend to prevent taxpayers from using a method that allocates 100% of recoveries to current taxable year bad debts. Commentators also have stated that although some recoveries may be traceable, some recoveries may not be traceable due to lump sum recoveries from third parties.

The final regulations provide that a taxpayer specifically should trace recoveries if the taxpayer is able to do so without undue burden. However, the IRS and Treasury Department believe if the taxpayer is unable specifically to trace all recoveries without undue burden, the taxpayer should be able to use any reasonable method in determining the amount of recoveries to be traced to each taxable year's bad debts. Therefore, the final regulations allow taxpayers to use a reasonable allocation method. A method will be considered reasonable if there is a cause and effect relationship between the allocation base or ratio and the recoveries. The final regulations also provide that a taxpayer may trace only recoveries that are traceable and allocate the remaining, untraceable, recoveries to charge-offs of amounts in the relevant beginning accounts receivable balances. Methods that include, for example, receivables for which the nonaccrual-experience method is not allowed to be used (*see* § 1.448–2(c)(1)(ii)) generally will not be considered reasonable.

d. Safe Harbor 3—Modified Black Motor Method

Safe harbor 3 is a variation of the formula addressed in *Black Motor Co.* v. *Commissioner*, 41 B.T.A. 300 (1940), *aff'd*, 125 F.2d 977 (6th Cir. 1942). No comments were received regarding safe harbor 3. The final regulations adopt the method in the 2003 regulations, with minor revisions made to the terms used in the formulas to conform the terms used throughout the regulations.

e. Safe Harbor 4—Modified Moving Average Method

The 2003 regulations provide that, for purposes of safe harbor 4, a taxpayer may determine the uncollectible amount by multiplying its accounts receivable balance at the end of the current taxable year by the ratio of total bad debts charged off for the current taxable year and the five preceding taxable years other than the credit charges (accounts receivable) that were charged off in the same taxable year they were generated, adjusted for recoveries of charge-offs during that period, to the sum of accounts receivable at the end of the current taxable year and the five preceding taxable years.

Some commentators argued that, by eliminating credit charges that were written off in the same taxable year they were generated, the effect of this computation for a taxpayer's first taxable year is to eliminate the intended benefit of section 448(d)(5). These commentators recommended that the final regulations permit newly formed taxpayers using safe harbor 4 to exclude a portion of their year-end accounts receivable balance, or in the alternative, clarify the rules on adopting this safe harbor method in the taxpayer's first taxable year in order to eliminate the administrative burden of filing Form 3115 in the succeeding taxable year.

This safe harbor method, like safe harbor 3, is a variation of the formula addressed in *Black Motor Co.* v. *Commissioner*. Safe harbor 4, by eliminating credit charges that were written off in the same taxable year they were generated, and thereby reducing the amount computed under the traditional Black Motor formula, remedies known shortcomings generally associated with the Black Motor formula, and as such, more accurately reflects a taxpayer's nonaccrual-experience. Therefore, the final regulations retain this rule.

Another commentator pointed out that there is a mismatching in the comparison of write-offs to accounts receivable in the formula used in safe harbor 4 because it compares the total accounts written off in a taxable year after the year of sale to the ending balances in accounts receivable for the six-year period. For example, the sum of the write-offs in each taxable year for the preceding taxable years' charges for services in year 7 is for services rendered in years 1 through 6, but the ending balances in accounts receivable are from years 2 through 7. This commentator opined that, if charges for services and accounts receivable are increasing, the ratio of write-offs from prior balances relative to current receivables would be understated and therefore the uncollectible amount would be understated. The commentator suggested that the sum of the write-offs in each taxable year for the preceding taxable years' charges for services should be divided by the sum of the beginning accounts receivable for the current and five preceding taxable years. The final regulations adopt this recommendation and, for purposes of safe harbor 4, the denominator is changed to reflect the beginning of the taxable year accounts receivable balances in lieu of accounts receivable balances at the end of the taxable year.

4. Special Rules

a. Acquisitions and Dispositions

A commentator recommended that the final regulations clarify that newly formed or acquired taxpayers in a section 351(a) or 721(a) nontaxable transaction are allowed to use predecessor data to compute their uncollectible amount under the nonaccrual-experience method. The final regulations adopt this comment and provide special rules for acquisitions and dispositions. Taxpayers that acquire a major portion of a trade or business or a unit of a trade or business (for example, a hospital) should include the data from the predecessor in the computations to avoid potentially skewing the computations for the remainder of the applicable period. Additionally, taxpayers that dispose of a major portion of a trade or business or a unit of a trade or business should not use the data related to the disposed trade or business in the computations. For purposes of the nonaccrual-experience methods of accounting, a new, qualified taxpayer that acquires property in any transaction to which section 381(a) does not apply must adopt a nonaccrual-experience method on the basis of its own experience. However, to the extent predecessor information is available, the data must be used in the newly-adopted nonaccrual-experience method.

b. Reportable Transactions

Some commentators recommended that the book-tax difference that may result from the use of the nonaccrual-experience method not be taken into account in determining whether a transaction is a reportable transaction for purposes of the disclosure rules under § 1.6011–4(b)(6). As a result of Notice 2006–6 (2006–5 I.R.B. 385), book-tax differences no longer create reportable transactions under § 1.6011–4(b)(6). Therefore, it is not necessary to adopt this recommendation.

c. Short Taxable Years

As discussed, the 2003 regulations generally provide procedures for taxpayers that have fewer than the requisite number of taxable years to adopt or change to a safe harbor nonaccrual-experience method. Some commentators requested rules on how taxpayers may compute their nonaccrual-experience amount in the case of a short taxable year. Commentators opined that for certain safe harbors, such as safe harbors 2, 3 and 4, inaccurate income exclusion can arise because a short taxable year will have a disproportionate effect on the numerator and denominator of the computations. For example, a taxpayer that has a relatively stable balance of accounts receivable but a short period, such as three months, may generate only one-fourth of the normal write-offs. These commentators recommended that the final regulations provide that, if a taxpayer experiences a short taxable year, the net write-offs for the short period should be annualized in order to prevent distortion of the safe harbor computation. Alternatively, these commentators suggested that taxpayers should be allowed to include data from the previous twelve months in the safe harbor computation. For example, for a calendar year taxpayer who experiences a short period ending March 31st, the taxpayer would use data from the twelve months prior to the period ending on March 31st to compute its nonaccrual-experience amount.

The final regulations provide that taxpayers must make appropriate adjustments for short taxable years for nonaccrual-experience methods that are based on a comparison of accounts receivable balance to total bad debts. The IRS and Treasury Department intend to issue administrative guidance on appropriate adjustments.

d. Periodic Systems

As with the 2003 regulations, the final regulations provide, in § 1.448–2(d)(2), that a taxpayer applies its nonaccrual-experience method with respect to each specific account receivable eligible for the method. The preamble to the 2003 regulations states that a taxpayer may continue to use the periodic system described in Notice 88–51 (1988–1 C.B. 535) in conjunction with any permissible nonaccrual-experience method used by the taxpayer. The use of a periodic method remains permissible under § 1.448–2(d)(2) of the final regulations.

5. Effective Date

These final regulations are applicable to taxable years ending on or after August 31, 2006. A commentator recommended that the final regulations be applied retroactively to allow taxpayers to settle any open taxable year in which the nonaccrual-experience method is an issue under consideration in examination, in Appeals, or before the U.S. Tax Court by using one of the safe harbor methods, and thus, avoid continued disagreements between the government and taxpayers. The final regulations do not adopt this recommendation. However, the Commissioner may settle an earlier taxable year on the basis of a safe harbor method that clearly reflects the taxpayer's experience.

6. Procedures for Adoption or Change in Method of Accounting

The 2003 regulations include specific rules for filing an application to change to a nonaccrual-experience method of accounting. The final regulations omit these rules, which will be provided in administrative guidance. The guidance will include automatic consent procedures for filing an application to change to one of the safe harbor nonaccrual-experience methods of accounting.

To adopt or change to a method other than one of the safe harbor nonaccrual-experience methods of accounting, a taxpayer must request advance consent under the current procedures for obtaining the consent of the Commissioner of Internal Revenue to change a method of accounting for Federal income tax purposes (*see*, for example, Rev. Proc. 97–27 (1997–1 C.B. 680) (as modified and amplified by Rev. Proc. 2002–19 (2002–1 C.B. 696), as amplified and clarified by Rev. Proc. 2002–54 (2002–2 C.B. 432)). In the interest of sound tax administration, a new taxpayer must request advance consent to adopt a method other than one of the safe harbor nonaccrual-experience methods to ensure that the method clearly reflects income and experience.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in these regulations will not have a significant regulatory impact on a substantial number of small entities. This certification is based upon the fact that the estimated burden associated with the information collection averages three hours per respondent. Moreover, for taxpayers that are eligible to use these regulations and that follow these regulations, any burden due to the collection of information in these regulations will be outweighed by the benefit received by accruing less income than would otherwise be required. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is W. Thomas McElroy, Jr. of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.448–2 is added to read as follows:

§ 1.448–2 Nonaccrual of certain amounts by service providers.

(a) *In general.* This section applies to taxpayers qualified to use a nonaccrual-experience method of accounting provided for in section 448(d)(5) with respect to amounts to be received for the performance of services. A taxpayer that satisfies the requirements of this section is not required to accrue any portion of amounts to be received from the performance of services that, on the basis of the taxpayer's experience, and to the extent determined under the computation or formula used by the taxpayer and allowed under this section, will not be collected. Except as otherwise provided in this section, a taxpayer is qualified to use a nonaccrual-experience method of accounting if the taxpayer uses an accrual method of accounting with respect to amounts to be received for the performance of services by the taxpayer and either—

(1) The services are in fields referred to in section 448(d)(2)(A) and described in § 1.448–1T(e)(4) (health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting); or

(2) The taxpayer meets the $5 million annual gross receipts test of section 448(c) and § 1.448–1T(f)(2) for all prior taxable years.

(b) *Application of method and treatment as method of accounting.* The rules of section 448(d)(5) and the regulations are applied separately to each taxpayer. For purposes of section 448(d)(5), the term *taxpayer* has the same meaning as the term *person* defined in section 7701(a)(1) (rather than the meaning of the term defined in section 7701(a)(14)). The nonaccrual of amounts to be received for the performance of services is a method of accounting (a nonaccrual-experience method). A change to a nonaccrual-experience method, from one nonaccrual-experience method to another nonaccrual-experience method, or to a periodic system (for example, *see* Notice 88–51 (1988–1 C.B. 535) and § 601.601(d)(2)(ii)(*b*) of this chapter), is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations apply. *See* also paragraphs (c)(2)(i), (c)(5), (d)(4), and (e)(3)(i) of this section. Except as provided in other published guidance, a taxpayer who wishes to adopt or change to any nonaccrual-experience method other than one of the safe harbor methods described in paragraph (f) of this section must request and receive advance consent from the Commissioner in accordance with the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent.

(c) *Definitions and special rules*—(1) *Accounts receivable*—(i) *In general.* Accounts receivable include only amounts that are earned by a taxpayer and otherwise recognized in income through the performance of services by the taxpayer. For purposes of determining a taxpayer's nonaccrual-experience under any method provided in this section, amounts described in paragraph (c)(1)(ii) of this section are not taken into account. Except as otherwise provided, for purposes of this section, accounts receivable do not include amounts that are not billed (such as for charitable or pro bono services) or amounts contractually not collectible (such as amounts in excess of a fee schedule agreed to by contract). *See* paragraph (g) *Examples 1* and *2* of this section for examples of this rule.

(ii) *Method not available for certain receivables*—(A) *Amounts not earned and recognized through the performance of services.* A nonaccrual-experience method of accounting may not be used with respect to amounts that are not earned by a taxpayer and otherwise recognized in income through the performance of services by the taxpayer. For example, a nonaccrual-experience method may not be used with respect to amounts owed to the taxpayer by reason of the taxpayer's activities with respect to lending money, selling goods, or acquiring accounts receivable or other rights to receive payment from other persons (including persons related to the taxpayer) regardless of whether those persons earned the amounts through the provision of services. However, *see* paragraph (d)(3) of this section for special rules regarding acquisitions of a trade or business or a unit of a trade or business.

(B) *If interest or penalty charged on amounts due.* A nonaccrual-experience method of accounting may not be used with respect to amounts due for which interest is required to be paid or for which there is any penalty for failure to timely pay any amounts due. For this purpose, a taxpayer will be treated as charging interest or penalties for late payment if the contract or agreement expressly provides for the charging of interest or penalties for late payment, regardless of the practice of the parties. If the contract or agreement does not expressly provide for the charging of interest or penalties for late payment, the determination of whether the taxpayer charges interest or penalties for late payment will be made based on all of the facts and circumstances of the transaction, and not merely on the characterization by the parties or the treatment of the transaction under state or local law. However, the offering of a discount for early payment of an amount due will not be regarded as the charging of interest or penalties for late payment under this section, if—

(*1*) The full amount due is otherwise accrued as gross income by the taxpayer at the time the services are provided; and

(*2*) The discount for early payment is treated as an adjustment to gross income in the year of payment, if payment is received within the time required for allowance of the discount. *See* paragraph (g) *Example 3* of this section for an example of this rule.

(2) *Applicable period*—(i) *In general.* The applicable period is the number of taxable years on which the taxpayer bases its nonaccrual-experience method. A change in the number of taxable years included in the applicable period is a change in method of accounting to which the procedures of section 446 apply. A change in the inclusion or exclusion of the current taxable year in the applicable period is a change in method of accounting to which the procedures of section 446 apply. A

change in the number of taxable years included in the applicable period or the inclusion or exclusion of the current taxable year in the applicable period is made on a cut-off basis.

(ii) *Applicable period for safe harbors.* For purposes of the safe harbors under paragraph (f) of this section the applicable period may consist of at least three but not more than six of the immediately preceding consecutive taxable years. Alternatively, the applicable period may consist of the current taxable year and at least two but not more than five of the immediately preceding consecutive taxable years. A period shorter than six taxable years is permissible only if the period contains the most recent preceding taxable years and all of the taxable years in the applicable period are consecutive.

(3) *Bad debts.* Bad debts are accounts receivable determined to be uncollectible and charged off.

(4) *Charge-offs.* Amounts charged off include only those amounts that would otherwise be allowable under section 166(a).

(5) *Determination date.* The determination date in safe harbor 2 provided in paragraph (f)(2) of this section is used as a cut-off date for determining all known data to be taken into account in the computation of the taxable year's uncollectible amount. The determination date may not be later than the earlier of the due date, including extensions, for filing the taxpayer's Federal income tax return for that taxable year or the date on which the taxpayer timely files the return for that taxable year. The determination date may be different in each taxable year. However, once a determination date is selected and used for a particular taxable year, it may not be changed for that taxable year. The choice of a determination date is not a method of accounting.

(6) *Recoveries.* Recoveries are amounts previously excluded from income under a nonaccrual-experience method or charged off that the taxpayer recovers.

(7) *Uncollectible amount.* The uncollectible amount is the portion of any account receivable amount due that, under the taxpayer's nonaccrual-experience method, will be not collected.

(d) *Use of experience to estimate uncollectible amounts*—(1) *In general.* In determining the portion of any amount due that, on the basis of experience, will not be collected, a taxpayer may use any nonaccrual-experience method that clearly reflects the taxpayer's nonaccrual-experience. The determination of whether a nonaccrual-experience method clearly reflects the taxpayer's nonaccrual-experience is made in accordance with the rules under paragraph (e) of this section. Alternatively, the taxpayer may use any one of the five safe harbor nonaccrual-experience methods of accounting provided in paragraphs (f)(1) through (f)(5) of this section, which are presumed to clearly reflect a taxpayer's nonaccrual-experience.

(2) *Application to specific accounts receivable.* The nonaccrual-experience method is applied with respect to each account receivable of the taxpayer that is eligible for this method. With respect to a particular account receivable, the taxpayer determines, in the manner prescribed in paragraphs (d)(1) or (f)(1) through (f)(5) of this section (whichever applies), the uncollectible amount. The determination is required to be made only once with respect to each account receivable, regardless of the term of the receivable. The uncollectible amount is not recognized as gross income. Thus, the amount recognized as gross income is the amount that would otherwise be recognized as gross income with respect to the account receivable, less the uncollectible amount. A taxpayer that excludes an amount from income during a taxable year as a result of the taxpayer's use of a nonaccrual-experience method may not deduct in any subsequent taxable year the amount excluded from income. Thus, the taxpayer may not deduct the excluded amount in a subsequent taxable year in which the taxpayer actually determines that the amount is uncollectible and charges it off. If a taxpayer using a nonaccrual-experience method determines that an amount that was not excluded from income is uncollectible and should be charged off (for example, a calendar-year taxpayer determines on November 1st that an account receivable that was originated on May 1st of the same taxable year is uncollectible and should be charged off), the taxpayer may deduct the amount charged off when it is charged off, but must include any subsequent recoveries in income. The reasonableness of a taxpayer's determination that amounts are uncollectible and should be charged off may be considered on examination. *See* paragraph (g) *Example 12* of this section for an example of this rule.

(3) *Acquisitions and dispositions*—(i) *Acquisitions.* If a taxpayer acquires the major portion of a trade or business of another person (predecessor) or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section for any taxable year ending on or after the acquisition, the experience from preceding taxable years of the predecessor attributable to the portion of the trade or business acquired, if available, must be used in determining the taxpayer's experience.

(ii) *Dispositions.* If a taxpayer disposes of a major portion of a trade or business or the major portion of a separate unit of a trade or business, and the taxpayer furnished the acquiring person the information necessary for the computations required by this section, then, for purposes of applying this section for any taxable year ending on or after the disposition, the experience from preceding taxable years attributable to the portion of the trade or business disposed may not be used in determining the taxpayer's experience.

(iii) *Meaning of terms.* For the meaning of the terms *acquisition, separate unit,* and *major portion, see* paragraph (b) of § 1.52–2. The term *acquisition* includes an incorporation or a liquidation.

(4) *New taxpayers.* The rules of this paragraph (d)(4) apply to any newly formed taxpayer to which the rules of paragraph (d)(3)(i) of this section do not apply. Any newly formed taxpayer that wants to use a safe harbor nonaccrual-experience method of accounting described in paragraph (f)(1), (f)(2), (f)(3), (f)(4), or (f)(5) of this section applies the methods by using the experience of the actual number of taxable years available in the applicable period. A newly formed taxpayer that wants to use one of the safe harbor nonaccrual-experience methods of accounting described in paragraph (f)(2), (f)(4), or (f)(5) of this section in its first taxable year and does not have any accounts receivable upon formation may not exclude any portion of its year-end accounts receivable from income for its first taxable year. The taxpayer must begin creating its moving average in its second taxable year by tracking the accounts receivable as of the first day of its second taxable year. The use of one of the safe harbor nonaccrual-experience methods of accounting described in paragraph (f)(2), (f)(4), or (f)(5) of this section in a taxpayer's second taxable year in this situation is not a change in method of accounting. Although the taxpayer must maintain the books and records necessary to perform the computations under the adopted safe harbor nonaccrual-experience method, the taxpayer is not required to affirmatively elect the method on its Federal income tax return for its first taxable year.

(5) *Recoveries.* Regardless of the nonaccrual-experience method of accounting used by a taxpayer under this section, the taxpayer must take

recoveries into account. If, in a subsequent taxable year, a taxpayer recovers an amount previously excluded from income under a nonaccrual-experience method or charged off, the taxpayer must include the recovered amount in income in that subsequent taxable year. *See* paragraph (g) *Example 13* of this section for an example of this rule.

(6) *Request to exclude taxable years from applicable period.* A period shorter than the applicable period generally is permissible only if the period consists of consecutive taxable years and there is a change in the type of a substantial portion of the outstanding accounts receivable such that the risk of loss is substantially increased. A decline in the general economic conditions in the area, which substantially increases the risk of loss, is a relevant factor in determining whether a shorter period is appropriate. However, approval to use a shorter period will not be granted unless the taxpayer supplies evidence that the accounts receivable outstanding at the close of the taxable years for the shorter period requested are more comparable in nature and risk to accounts receivable outstanding at the close of the current taxable year. A substantial increase in a taxpayer's bad debt experience is not, by itself, sufficient to justify the use of a shorter period. If approval is granted to use a shorter period, the experience for the excluded taxable years may not be used for any subsequent taxable year. A request for approval to exclude the experience of a prior taxable year must be made in accordance with the applicable procedures for requesting a letter ruling and must include a statement of the reasons the experience should be excluded. A request will not be considered unless it is sent to the Commissioner at least 30 days before the close of the first taxable year for which the approval is requested.

(7) *Short taxable years.* A taxpayer with a short taxable year that uses a nonaccrual-experience method that compares accounts receivable balance to total bad debts during the taxable year should make appropriate adjustments.

(8) *Recordkeeping requirements*—(i) A taxpayer using a nonaccrual-experience method of accounting must keep sufficient books and records to establish the amount of any exclusion from gross income under section 448(d)(5) for the taxable year, including books and records demonstrating—

(A) The nature of the taxpayer's nonaccrual-experience method;

(B) Whether, for any particular taxable year, the taxpayer qualifies to use its nonaccrual-experience method (including the self-testing requirements of paragraph (e) of this section (if applicable));

(C) The taxpayer's determination that amounts are uncollectible;

(D) The proper amount that is excludable under the taxpayer's nonaccrual-experience method; and

(E) The taxpayer's determination date under paragraph (c)(5) of this section (if applicable).

(ii) If a taxpayer does not maintain records of the data that are sufficient to establish the amount of any exclusion from gross income under section 448(d)(5) for the taxable year, the Internal Revenue Service may change the taxpayer's method of accounting on examination. *See* § 1.6001–1 for rules regarding records.

(e) *Requirements for nonaccrual method to clearly reflect experience*—(1) *In general.* A nonaccrual-experience method clearly reflects the taxpayer's experience if the taxpayer's nonaccrual-experience method meets the self-test requirements described in this paragraph (e). If a taxpayer is using one of the safe harbor nonaccrual-experience methods described in paragraphs (f)(1) through (f)(4) of this section, its method is deemed to clearly reflect its experience and is not subject to the self-testing requirements in paragraphs (e)(2) and (e)(3) of this section.

(2) *Requirement to self-test*—(i) *In general.* A taxpayer using, or desiring to use, a nonaccrual-experience method must self-test its nonaccrual-experience method for its first taxable year for which the taxpayer uses, or desires to use, that nonaccrual-experience method (first-year self-test) and every three taxable years thereafter (three-year self-test). Each self-test must be performed by comparing the uncollectible amount (under the taxpayer's nonaccrual-experience method) with the taxpayer's actual experience. A taxpayer using the safe harbor under paragraph (f)(5) of this section must self-test using the safe harbor comparison method in paragraph (e)(3) of this section.

(ii) *First-year self-test.* The first-year self-test must be performed by comparing the uncollectible amount with the taxpayer's actual experience for its first taxable year for which the taxpayer uses, or desires to use, that nonaccrual-experience method. If the uncollectible amount for the first-year self-test is less than or equal to the taxpayer's actual experience for its first taxable year for which the taxpayer uses, or desires to use, that nonaccrual-experience method, the taxpayer's nonaccrual-experience method is treated as clearly reflecting its experience for the first taxable year. If, as a result of the first-year self-test, the uncollectible amount for the test period is greater than the taxpayer's actual experience, then—

(A) The taxpayer's nonaccrual-experience method is treated as not clearly reflecting its experience;

(B) The taxpayer is not permitted to use that nonaccrual-experience method in that taxable year; and

(C) The taxpayer must change to (or adopt) for that taxable year either—

(*1*) Another nonaccrual-experience method that clearly reflects experience, that is, a nonaccrual-experience method that meets the first-year self-test requirement; or

(*2*) A safe harbor nonaccrual-experience method described in paragraphs (f)(1) through (f)(5) of this section.

(iii) *Three-year self-test*—(A) *In general.* The three-year self-test must be performed by comparing the sum of the uncollectible amounts for the current taxable year and prior two taxable years (cumulative uncollectible amount) with the sum of the taxpayer's actual experience for the current taxable year and prior two taxable years (cumulative actual experience amount).

(B) *Recapture.* If the cumulative uncollectible amount for the test period is greater than the cumulative actual experience amount for the test period, the taxpayer's uncollectible amount is limited to the cumulative actual experience amount for the test period. Any excess of the taxpayer's cumulative uncollectible amount over the taxpayer's cumulative actual nonaccrual-experience amount excluded from income during the test period must be recaptured into income in the third taxable year of the three-year self-test period.

(C) *Determination of whether method is permissible or impermissible.* If the cumulative uncollectible amount is less than 110 percent of the cumulative actual experience amount, the taxpayer's nonaccrual-experience method is treated as a permissible method and the taxpayer may continue to use its alternative nonaccrual-experience method, subject to the three-year self-test requirement of this paragraph (e)(2)(iii). If the cumulative uncollectible amount is greater than or equal to 110 percent of the cumulative actual experience amount, the taxpayer's nonaccrual-experience method is treated as impermissible in the taxable year subsequent to the three-year self-test year and does not clearly reflect its experience. The taxpayer must change to another nonaccrual-experience method that clearly reflects experience, including, for example, one of the safe harbor nonaccrual-experience

methods described in paragraphs (f)(1) through (f)(5) of this section, for the subsequent taxable year. A change in method of accounting from an impermissible method under this paragraph (e)(2)(iii)(C) to a permissible method in the taxable year subsequent to the three-year self-test year is made on a cut-off basis.

(iv) *Determination of taxpayer's actual experience.* [Reserved.]

(3) *Safe harbor comparison method*—(i) *In general.* A taxpayer using, or desiring to use, a nonaccrual-experience method under the safe harbor in paragraph (f)(5) of this section must self-test its nonaccrual-experience method for its first taxable year for which the taxpayer uses, or desires to use, that nonaccrual-experience method (first-year self-test) and every three taxable years thereafter (three-year self-test). A nonaccrual-experience method under the safe harbor in paragraph (f)(5) of this section is deemed to clearly reflect experience provided all the requirements of the safe harbor comparison method of this paragraph (e)(3) are met. Each self-test must be performed by comparing the uncollectible amount (under the taxpayer's nonaccrual-experience method) with the uncollectible amount that would have resulted from use of one of the safe harbor methods described in paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this section. A change from a nonaccrual-experience method that uses the safe harbor comparison method for self-testing to a nonaccrual-experience method that does not use the safe harbor comparison method for self-testing, and vice versa, is a change in method of accounting to which the provisions of sections 446 and 481 and the regulations apply. A change solely to use or discontinue use of the safe harbor comparison method for purposes of determining whether the nonaccrual-experience method clearly reflects experience must be made on a cut-off basis and without audit protection.

(ii) *Requirements to use safe harbor comparison method*—(A) *First-year self-test.* The first-year self-test must be performed by comparing the uncollectible amount with the uncollectible amount determined under any of the safe harbor methods described in paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this section (safe harbor uncollectible amount) for its first taxable year for which the taxpayer uses, or desires to use, that nonaccrual-experience method. If the uncollectible amount for the first-year self-test is less than or equal to the safe harbor uncollectible amount, then the taxpayer's nonaccrual-experience method is treated as clearly reflecting its experience for the first taxable year. If, as a result of the first-year self-test, the uncollectible amount for the test period is greater than the safe harbor uncollectible amount, then—

(*1*) The taxpayer's nonaccrual-experience method is treated as not clearly reflecting its experience;

(*2*) The taxpayer is not permitted to use that nonaccrual-experience method in that taxable year; and

(*3*) The taxpayer must change to (or adopt) for that taxable year either—

(*i*) Another nonaccrual-experience method that clearly reflects experience, that is, a nonaccrual-experience method that meets the first-year self-test requirement; or

(*ii*) A safe harbor nonaccrual-experience method described in paragraphs (f)(1) through (f)(5) of this section.

(B) *Three-year self-test.* The three-year self-test must be performed by comparing the sum of the uncollectible amounts for the current taxable year and prior two taxable years (cumulative uncollectible amount) with the sum of the uncollectible amount determined under any of the safe harbor methods described in paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this section for the current taxable year and prior two taxable years (cumulative safe harbor uncollectible amounts). If the cumulative uncollectible amount for the three-year self-test is less than or equal to the cumulative safe harbor uncollectible amount for the test period, then the taxpayer's nonaccrual-experience method is treated as clearly reflecting its experience for the test period and the taxpayer may continue to use that nonaccrual-experience method, subject to a requirement to self-test again after three taxable years. If the cumulative uncollectible amount for the test period is greater than the cumulative safe harbor uncollectible amount for the test period, the taxpayer's uncollectible amount is limited to the cumulative safe harbor uncollectible amount for the test period. Any excess of the taxpayer's cumulative uncollectible amount over the taxpayer's cumulative safe harbor uncollectible amount excluded from income during the test period must be recaptured into income in the third taxable year of the three-year self-test period. If the cumulative uncollectible amount is less than 110 percent of the cumulative safe harbor uncollectible amount, the taxpayer's nonaccrual-experience method is treated as a permissible method and the taxpayer may continue to use its alternative nonaccrual-experience method, subject to the three-year self-test requirement of this paragraph (e)(3)(ii)(B). If the cumulative uncollectible amount is greater than or equal to 110 percent of the cumulative safe harbor uncollectible amount, the taxpayer's nonaccrual-experience method is treated as impermissible in the taxable year subsequent to the three-year self-test year and does not clearly reflect its experience. The taxpayer must change to another nonaccrual-experience method that clearly reflects experience, including, for example, one of the safe harbor nonaccrual-experience methods described in paragraphs (f)(1) through (f)(5) of this section, for the subsequent taxable year. A change in method of accounting from an impermissible method under this paragraph (e)(3)(ii)(B) to a permissible method in the taxable year subsequent to the three-year self-test year is made on a cut-off basis.

(4) *Methods that do not clearly reflect experience.* [Reserved.]

(5) *Contemporaneous documentation.* For purposes of this paragraph (e), including the safe harbor comparison method of paragraph (e)(3) of this section, a taxpayer must document in its books and records, in the taxable year any first-year or three-year self-test is performed, the method used to conduct the self-test, including appropriate documentation and computations that resulted in the determination that the taxpayer's nonaccrual-experience method clearly reflected the taxpayer's nonaccrual-experience for the applicable test period.

(f) *Safe harbors*—(1) *Safe harbor 1: revenue-based moving average method.* A taxpayer may use a nonaccrual-experience method under which the taxpayer determines the uncollectible amount by multiplying its accounts receivable balance at the end of the current taxable year by a percentage (revenue-based moving average percentage). The revenue-based moving average percentage is computed by dividing the total bad debts sustained, adjusted by recoveries received, throughout the applicable period by the total revenue resulting in accounts receivable earned throughout the applicable period. *See* paragraph (g) *Example 4* of this section for an example of this method. Thus, the uncollectible amount under the revenue-based moving average method is computed:

$$\frac{\text{Bad debts sustained, adjusted by recoveries received, during the applicable period}}{\text{Total revenue resulting in accounts receivable during the applicable period}} \times \text{Accounts receivable at end of current taxable year}$$

(2) *Safe harbor 2: actual experience method—(i) Option A: single determination date.* A taxpayer may use a nonaccrual-experience method under which the taxpayer determines the uncollectible amount by multiplying its accounts receivable balance at the end of the current taxable year by a percentage (moving average nonaccrual-experience percentage) and then increasing the resulting amount by 5 percent. *See* paragraph (g) *Example 5* of this section for an example of safe harbor 2 in general, and paragraph (g) *Example 6* of this section for an example of the single determination date option of safe harbor 2. The taxpayer's moving average nonaccrual-experience percentage is computed by dividing the total bad debts sustained, adjusted by recoveries that are allocable to the bad debts, by the determination date of the current taxable year related to the taxpayer's accounts receivable balance at the beginning of each taxable year during the applicable period by the sum of the accounts receivable at the beginning of each taxable year during the applicable period. Thus, the uncollectible amount under Option A of the actual experience method is computed:

$$\frac{\text{Bad debts sustained, adjusted by recoveries received that are allocable to the bad debts, by the determination date of the current taxable year related to the taxpayer's accounts receivable balance at the beginning of each taxable year during the applicable period}}{\text{Sum of accounts receivable at the beginning of each taxable year during the applicable period}} \times \text{Accounts receivable at end of current taxable year} \times 1.05$$

(ii) *Option B: multiple determination dates.* Alternatively, in computing its bad debts related to the taxpayer's accounts receivable balance at the beginning of each taxable year during the applicable period, a taxpayer may use the original determination date for each taxable year during the applicable period. That is, the taxpayer may use bad debts sustained, adjusted by recoveries received that are allocable to the bad debts, by the determination date of each taxable year during the applicable period rather than the determination date of the current taxable year. *See* paragraph (g) *Example 7* of this section for an example of the multiple determination date option of safe harbor 2. Thus, the uncollectible amount under Option B of the actual experience method is computed:

$$\frac{\text{Sum of, for each taxable year during the applicable period, bad debts sustained, adjusted by recoveries received that are allocable to the bad debts, by that taxable year's determination date and related to the taxpayer's accounts receivable balance at the beginning of the taxable year}}{\text{Sum of accounts receivable at the beginning of each taxable year during the applicable period}} \times \text{Accounts receivable at end of current taxable year} \times 1.05$$

(iii) *Tracing of recoveries*—(A) *In general.* Bad debts related to the taxpayer's accounts receivable balance at the beginning of each taxable year during the applicable period must be adjusted by the portion, if any, of recoveries received that are properly allocable to the bad debts.

(B) *Specific tracing.* If a taxpayer, without undue burden, can trace all recoveries to their corresponding charge-offs, the taxpayer must specifically trace all recoveries.

(C) *Recoveries cannot be traced without undue burden.* If a taxpayer has any recoveries that cannot, without undue burden, be traced to corresponding charge-offs, the taxpayer may allocate those or all recoveries between charge-offs of amounts in the relevant beginning accounts receivable balances and other charge-offs using an allocation method that is reasonable under all of the facts and circumstances.

(*1*) *Reasonable allocations.* An allocation method is reasonable if there is a cause and effect relationship between the allocation base or ratio and the recoveries. A taxpayer may elect to trace recoveries that are traceable and allocate all untraceable recoveries to charge-offs of amounts in the relevant beginning accounts receivable balances. Such an allocation method will be deemed to be reasonable under all the facts and circumstances.

(*2*) *Allocations that are not reasonable.* Allocation methods that generally will not be considered reasonable include, for example, methods in which there is not a cause and effect relationship between the allocation base or ratio and methods in which receivables for which the nonaccrual-experience method is not allowed to be used are included in the allocation. *See* paragraph (c)(1)(ii) of this section for examples of receivables for which the nonaccrual-experience method is not allowed.

(3) *Safe harbor 3: modified Black Motor method.* A taxpayer may use a nonaccrual-experience method under which the taxpayer determines the uncollectible amount by multiplying its accounts receivable balance at the end of the current taxable year by a percentage (modified Black Motor moving average percentage) and then reducing the resulting amount by the bad debts written off during the current taxable year relating to accounts receivable generated during the current taxable year. The modified Black Motor moving average percentage is computed by dividing the total bad debts sustained, adjusted by recoveries received, during the applicable period

by the sum of accounts receivable at the end of each taxable year during the applicable period. *See* paragraph (g) *Example 8* of this section for an example of this method. Thus, the uncollectible amount under the modified Black Motor method is computed:

$$\frac{\text{Bad debts sustained, adjusted by recoveries received, during the applicable period}}{\text{Sum of accounts receivable at the end of each taxable year during the applicable period}} \times \text{Accounts receivable at end of current taxable year} - \text{Bad debts written off during the current taxable year relating to accounts receivable generated during the current taxable year}$$

(4) *Safe harbor 4: modified moving average method.* A taxpayer may use a nonaccrual-experience method under which the taxpayer determines the uncollectible amount by multiplying its accounts receivable balance at the end of the current taxable year by a percentage (modified moving average percentage). The modified moving average percentage is computed by dividing the total bad debts sustained, adjusted by recoveries received, during the applicable period other than bad debts that were written off in the same taxable year the related accounts receivable were generated by the sum of accounts receivable at the beginning of each taxable year during the applicable period. *See* paragraph (g) *Example 9* of this section for an example of this method. Thus, the uncollectible amount under the modified moving average method is computed:

$$\frac{\text{(Bad debts sustained, adjusted by recoveries received, during the applicable period} - \text{Bad debts written off in same taxable year accounts receivable generated)}}{\text{Sum of accounts receivable at the beginning of each taxable year during the applicable period}} \times \text{Accounts receivable at end of current taxable year}$$

(5) *Safe harbor 5: alternative nonaccrual-experience method.* A taxpayer may use an alternative nonaccrual-experience method that clearly reflects the taxpayer's actual nonaccrual-experience, provided the taxpayer's alternative nonaccrual-experience method meets the self-test requirements described in paragraph (e)(3) of this section.

(g) *Examples.* The following examples illustrate the provisions of this section. In each example, the taxpayer uses a calendar year for Federal income tax purposes and an accrual method of accounting, does not require the payment of interest or penalties with respect to past due accounts receivable (except in the case of *Example 3*) and, in the case of *Examples 5* through *7*, selects an appropriate determination date for each taxable year. The examples are as follows:

Example 1 Contractual allowance or adjustment. B, a healthcare provider, performs a medical procedure on individual C, who has health insurance coverage with IC, an insurance company. B bills IC and C for $5,000, B's standard charge for this medical procedure. However, B has a contract with IC that obligates B to accept $3,500 as full payment for the medical procedure if the procedure is provided to a patient insured by IC. Under the contract, only $3,500 of the $5,000 billed by B is legally collectible from IC and C. The remaining $1,500 represents a contractual allowance or contractual adjustment. Under paragraph (c)(1)(i) of this section, the remaining $1,500 is not a contractually collectible amount for purposes of this section and B may not use a nonaccrual-experience method with respect to this portion of the receivable.

Example 2. Charitable or pro bono services. D, a law firm, agrees to represent individual E in a legal matter and to provide services to E on a pro bono basis. D normally charges $500 for these services. Because D provides its services to E pro bono, D's services are never billed or intended to result in revenue. Thus, under paragraph (c)(1)(i) of this section, the $500 is not a collectible amount for purposes of this section and D may not use a nonaccrual-experience method with respect to this portion of the receivable.

Example 3. Charging interest and/or penalties. Z has two billing methods for the amounts to be received from Z's provision of services described in paragraph (a)(1) of this section. Under one method, for amounts that are more than 90 days past due, Z charges interest at a market rate until the amounts (together with interest) are paid. Under the other billing method, Z charges no interest for amounts past due. Under paragraph (c)(1)(ii) of this section, A may not use a nonaccrual-experience method of accounting with respect to any of the amounts billed under the method that charges interest on amounts that are more than 90 days past due. Z may, however, use the nonaccrual-experience method with respect to the amounts billed under the method that does not charge interest for amounts past due.

Example 4. Safe harbor 1: Revenue-based moving average method. (i) F uses the revenue-based moving average method described in paragraph (f)(1) of this section with an applicable period of six taxable years. F's total accounts receivable and bad debt experience for the 2006 taxable year and the five immediately preceding consecutive taxable years are as follows:

Taxable year	Total accounts receivable earned during the taxable year	Bad debts adjusted for recoveries
2001	$40,000	$5,700
2002	40,000	7,200
2003	40,000	11,000
2004	60,000	10,200
2005	70,000	14,000
2006	80,000	16,800
Total	330,000	64,900

(ii) F's revenue-based moving average percentage is 19.67% ($64,900/$330,000). If $49,300 of accounts receivable remains outstanding as of the close of that taxable year (2006), F's uncollectible amount using the revenue-based moving average safe harbor method is computed by multiplying $49,300 by the revenue-based moving average percentage of 19.67%, or $9,697. Thus, F may exclude $9,697 from gross income for 2006.

Example 5. Safe harbor 2: Actual experience method. (i) G is eligible to use a nonaccrual-experience method and wishes to adopt the actual experience method of paragraph (f)(2) of this section. G elects to use a three-year applicable period consisting of the current and two immediately preceding consecutive taxable years. G determines that

its actual accounts receivable collection experience is as follows:

Taxable year	Total A/R balance at beginning of taxable year	Bad debts, adjusted for recoveries, related to A/R balance at beginning of taxable year
2006	$1,000,000	$35,000
2007	760,000	75,000
2008	1,975,000	65,000
Total	3,735,000	175,000

(ii) G's ending A/R Balance on December 31, 2008, is $880,000. In 2008, G computes its uncollectible amount by using a three-year moving average under paragraph (f)(2) of this section. G's moving average nonaccrual-experience percentage is 4.7%, determined by dividing the sum of the amount of G's accounts receivable outstanding on January 1 of 2006, 2007, and 2008, that were determined to be bad debts (adjusted for recoveries allocable to the bad debts) on or before the corresponding determination date(s), by the sum of the amount of G's accounts receivable outstanding on January 1 of 2006, 2007, and 2008 ($175,000/$3,735,000 or 4.7%). G's uncollectible amount for 2008 is determined by multiplying this percentage by the balance of G's accounts receivable on December 31, 2008 ($880,000 x 4.7% = $41,360), and increasing this amount by 105% ($41,360 × 105% = $43,428). G may exclude $43,428 from gross income for 2008.

Example 6. Safe harbor 2: Single determination date (Option A). H is eligible to use a nonaccrual-experience method and wishes to adopt the actual experience method of paragraph (f)(2) of this section. H elects to use a six-year applicable period consisting of the current and five immediately preceding taxable years. H also elects to use a single determination date in accordance with paragraph (f)(2)(i) of this section. H selects December 31, its taxable year-end, as its determination date. Since H is using a single determination date from the current taxable year, its determination date for the 2001–2006 applicable period is December 31, 2006. H has a $800 charge-off in 2003 of an account receivable in the 2003 beginning accounts receivable balance. In 2005, H has a recovery of $100 which is traceable, without undue burden, to the $800 charge-off in 2003. Since the $100 recovery occurred prior to H's December 31, 2006, determination date, it reduces the amount of H's bad debts in the numerator of the formula for purposes of determining H's moving average nonaccrual-experience percentage. In addition, H must include the $100 recovery in income in 2005 (*see* paragraph (d)(5) of this section regarding recoveries).

Example 7. Safe harbor 2: Multiple determination dates (Option B). The facts are the same as in *Example 6*, except H elects to use multiple determination dates in accordance with paragraph (f)(2)(ii) of this section. Consequently, H's determination date is December 31, 2001, for its calculations of the portion of the numerator relating to the 2001 taxable year, December 31, 2002, for its calculations of the portion of the numerator relating to the 2002 taxable year, and so on through the final taxable year (2006), which has a determination date of December 31, 2006. Since the $100 recovery did not occur until after December 31, 2003 (the determination date for the 2003 taxable year), it does not reduce the amount of H's bad debts in the numerator of the formula for purposes of determining H's moving average nonaccrual-experience percentage. However, H still must include the $100 recovery in income in 2005 (*see* paragraph (d)(5) of this section regarding recoveries).

Example 8. Safe harbor 3: Modified Black Motor method. (i) J uses the modified Black Motor method described in paragraph (f)(3) of this section and a six-year applicable period. J's total accounts receivable and bad debt experience for the 2006 taxable year and the five immediately preceding consecutive taxable years are as follows:

Taxable year	Accounts receivable at end of taxable year	Bad debts (adjusted for recoveries)
2001	$130,000	$9,100
2002	140,000	7,000
2003	140,000	14,000
2004	160,000	14,400
2005	170,000	20,400
2006	180,000	10,800
Total	920,000	75,700

(ii) J's modified Black Motor moving average percentage is 8.228% ($75,700/$920,000). If the accounts receivable generated and written off during the current taxable year are $3,600, J's uncollectible amount is $11,210, computed by multiplying J's accounts receivable on December 31, 2006 ($180,000) by the modified Black Motor moving average percentage of 8.228% and reducing the resulting amount by $3,600 (J's accounts receivable generated and written off during the 2006 taxable year). J may exclude $11,210 from gross income for 2006.

Example 9. Safe harbor 4: Modified moving average method. (i) The facts are the same as in *Example 8*, except that the balances represent accounts receivable at the beginning of the taxable year, and J uses the modified moving average method described in paragraph (f)(4) of this section and a six-year applicable period. Furthermore, the accounts receivable that were written off in the same taxable year they were generated, adjusted for recoveries of bad debts during the period are as follows:

Taxable year	Accounts receivable written off in same taxable year as generated (adjusted for recoveries)
2001	$3,033
2002	2,333
2003	4,667
2004	4,800
2005	6,800
2006	3,600
Total	25,233

(ii) J's modified moving average percentage is 5.486% (($75,700 − $25,233)/$920,000). J's uncollectible amount is $9,875, computed by multiplying J's accounts receivable on December 31, 2006 ($180,000) by the modified moving average percentage of 5.486%. J may exclude $9,875 from gross income for 2006.

Example 10. First-year self-test. Beginning in 2006, K is eligible to use a nonaccrual-experience method and wants to adopt an alternative nonaccrual-experience method under paragraph (f)(5) of this section, and consequently is subject to the safe harbor comparison method of self-testing under paragraph (e)(3) of this section. K elects to self-test against safe harbor 1 for purposes of conducting its first-year self-test. K's uncollectible amount for 2006 is $22,000. K's safe harbor uncollectible amount under safe harbor 1 is $21,000. Because K's uncollectible amount for 2006 ($22,000) is greater than the safe harbor uncollectible amount ($21,000), K's alternative nonaccrual-experience method is treated as not clearly reflecting its nonaccrual experience for 2006. Accordingly, K must adopt either another nonaccrual-experience method that clearly reflects experience (subject to the self-testing requirements of paragraph (e)(2)(ii) of this section, or a safe harbor nonaccrual-experience method described in paragraph (f)(1) (revenue-based moving average), (f)(2) (actual experience method), (f)(3) (modified Black Motor method), (f)(4) (modified moving average method) of this section, or another alternative nonaccrual-experience method under paragraph (f)(5) of this section that meets the self-testing requirements of paragraph (e)(3) of this section.

Example 11. Three-year self-test. The facts are the same as in Example 10, except that K's safe harbor uncollectible amount under safe harbor 1 for 2006 is also $22,000. Consequently, K meets the first-year self-test requirement and may use its alternative nonaccrual-experience method. Subsequently, K's cumulative uncollectible amount for 2007 through 2009 is $300,000. K's safe harbor uncollectible amount for 2007 through 2009 under its chosen safe harbor method for self-testing (safe harbor 1) is $295,000. Because K's cumulative uncollectible amount for the three-year test period (taxable years 2007 through 2009) is greater than its safe harbor uncollectible amount for the three-year test period ($295,000), under paragraph (e)(3)(ii)(B) of this section, the $5,000 excess of K's cumulative uncollectible amount over K's safe harbor uncollectible amount for the three-year test period must be recaptured into income in 2009 in accordance with

paragraph (e)(3)(ii)(B) of this section. Since K's cumulative uncollectible amount for the three-year test period ($300,000) is less than 110% of its safe harbor uncollectible amount ($295,000 × 110% = $324,500), under paragraph (e)(3)(ii)(B) of this section, K may continue to use its alternative nonaccrual-experience method, subject to the three-year self-test requirement.

Example 12. Subsequent worthlessness of year-end receivable. The facts are the same as in *Example 4*, except that one of the accounts receivable outstanding at the end of 2002 was for $8,000, and in 2003, under section 166, the entire amount of this receivable becomes wholly worthless. Because F does not accrue as income $1,573 of this account receivable ($8,000 × .1967) under the nonaccrual-experience method in 2002, under paragraph (d)(2) of this section F may not deduct this portion of the account receivable as a bad debt deduction under section 166 in 2003. F may deduct the remaining balance of the receivable in 2003 as a bad debt deduction under section 166 ($8,000 − $1,574 = $6,426).

Example 13. Subsequent collection of year-end receivable. The facts are the same as in *Example 4*. In 2007, F collects in full an account receivable of $1,700 that was outstanding at the end of 2006. Under paragraph (d)(5) of this section, F must recognize additional gross income in 2007 equal to the portion of this receivable that F excluded from gross income in the prior taxable year ($1,700 × .1967 = $334). That amount ($334) is a recovery under paragraph (d)(5) of this section.

(h) *Effective date.* This section is applicable for taxable years ending on or after August 31, 2006.

§ 1.448–2T [Removed]

■ **Par. 3.** Section 1.448–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.448–2	1545–1855
* * * * *	

Steven T. Miller,

Acting Deputy Commissioner for Services and Enforcement.

Approved: August 30, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 06–7446 Filed 8–31–06; 1:53 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9284]

RIN 1545–BC72

Collection After Assessment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the collection of tax liabilities after assessment. The regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998. These regulations affect persons determining how long the Internal Revenue Service has to collect taxes that have been properly assessed.

DATES: *Effective Date:* These regulations are September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Debra A. Kohn, (202) 622–7985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6502 of the Internal Revenue Code (Code). The regulations reflect the amendment of the Code by section 3461 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998), Public Law 105–206 (112 Stat. 685, 764).

On March 4, 2005, a notice of proposed rulemaking (REG–148701–03) relating to collection after assessment was published in the **Federal Register** (70 FR 10572). No public hearing was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed in this preamble.

Collection of Tax Liabilities After Assessment Under Section 6502

Pursuant to section 6502 of the Code, the IRS generally has 10 years from the date of assessment to collect a timely assessed tax liability. Prior to January 1, 2000, the effective date of section 3461 of RRA 1998, section 6502 permitted the IRS to enter into agreements with the taxpayer to extend the period of limitations on collection at any time prior to the expiration of the period provided in section 6502. Prior to the enactment of RRA 1998, the IRS used these collection extension agreements, or waivers, in various circumstances to protect its ability to collect a tax liability beyond the original 10-year period of limitations on collection. For example, the IRS historically conditioned consideration of an offer in compromise upon the execution of a collection extension agreement or waiver.

In addition, the Code contains several provisions that operate to toll the period of limitations on collection upon the occurrence of certain events. For example, section 6331(k) operates in part to suspend the period of limitations on collection for the period of time during which an offer in compromise is pending, for 30 days after rejection, and while a timely filed appeal is pending. Similarly, section 6503(h) operates to suspend the period of limitations on collection for the period of time during which the IRS is prohibited from collecting a tax due to a bankruptcy proceeding, and for 6 months thereafter. These statutory suspension provisions toll the period of limitations on collection even if the period of limitations on collection previously has been extended pursuant to an executed collection extension agreement. See *Klingshirn* v. *United States (In re Klingshirn)*, 147 F.3d 526 (6th Cir. 1998).

Section 3461 of RRA 1998 amended section 6502 of the Code to limit the ability of the IRS to enter into agreements extending the period of limitations on collection. Section 3461 of RRA 1998 also included an off-Code provision governing the continued effect of collection extension agreements executed on or before December 31, 1999.

Summary of Comments and Explanation of Provisions

The final regulations incorporate the amendments made by section 3461 of RRA 1998. The regulations provide that the IRS may enter into an agreement to extend the period of limitations on collection if an extension agreement is executed: (1) At the time an installment

agreement is entered into; or (2) prior to release of a levy pursuant to section 6343, if the release occurs after the expiration of the original period of limitations on collection.

One set of comments received in response to the notice of proposed rulemaking recommended that the final regulations: (1) Deem void all waivers signed prior to January 1, 2000, in conjunction with installment agreements that did not provide for payment in full of the underlying tax liability by the extended collection statute expiration date; and (2) provide that all taxpayers who have made payments since December 31, 2002, on such installment agreements are entitled to a refund of such payments. Because such provisions are beyond the scope of the underlying statute, they are not included in the final regulations.

Another set of comments received in response to the notice of proposed rulemaking concerned an inconsistency between the language of section 3461(c)(2) and a proposed alternative date of expiration for extension agreements made on or before December 31, 1999.

The notice of proposed rulemaking provided that extension agreements executed on or before December 31, 1999, other than those executed in connection with installment agreements, expire on the later of: (1) December 31, 2002, or if earlier, the date on which the extension agreement expired by its terms; or (2) the end of the original 10-year statutory period. The comments reflect that the language of the proposed regulations is inconsistent with the language of the statute. Few cases exist in which waivers executed on or before December 31, 1999, are still open under the statutory framework. Thus, there is no longer a need to address this provision in final regulations.

To the extent that the notice of proposed rulemaking differs from the final regulations, it is withdrawn as of the effective date of the final regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6502–1 is revised to read as follows:

§ 301.6502–1 Collection after assessment.

(a) *General rule.* In any case in which a tax has been assessed within the applicable statutory period of limitations on assessment, a proceeding in court to collect the tax may be commenced, or a levy to collect the tax may be made, within 10 years after the date of assessment.

(b) *Agreement to extend the period of limitations on collection.* The Secretary may enter into an agreement with a taxpayer to extend the period of limitations on collection in the following circumstances:

(1) *Extension agreement entered into in connection with an installment agreement.* If the Secretary and the taxpayer enter into an installment agreement for the tax liability prior to the expiration of the period of limitations on collection, the Secretary and the taxpayer, at the time the installment agreement is entered into, may enter into a written agreement to extend the period of limitations on collection to a date certain. A written extension agreement entered into under this paragraph shall extend the period of limitations on collection until the 89th day after the date agreed upon in the written agreement.

(2) *Extension agreement entered into in connection with the release of a levy under section 6343.* If the Secretary has levied on any part of the taxpayer's property prior to the expiration of the period of limitations on collection and the levy is subsequently released pursuant to section 6343 after the expiration of the period of limitations on collection, the Secretary and the taxpayer, prior to the release of the levy, may enter into a written agreement to extend the period of limitations on collection to a date certain. A written extension agreement entered into under this paragraph shall extend the period of limitations on collection until the date agreed upon in the extension agreement.

(c) *Proceeding in court for the collection of the tax.* If a proceeding in court for the collection of a tax is begun within the period provided in paragraph (a) of this section (or within any extended period as provided in paragraph (b) of this section), the period during which the tax may be collected by levy is extended until the liability for the tax or a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

(d) *Effect of statutory suspensions of the period of limitations on collection if executed collection extension agreement is in effect.* (1) Any statutory suspension of the period of limitations on collection tolls the running of the period of limitations on collection, as extended pursuant to an executed extension agreement under paragraph (b) of this section, for the amount of time set forth in the relevant statute.

(2) The following example illustrates the principle set forth in this paragraph (d):

Example. In June of 2003, the Internal Revenue Service (IRS) enters into an installment agreement with the taxpayer to provide for periodic payments of the taxpayer's timely assessed tax liabilities. At the time the installment agreement is entered into, the taxpayer and the IRS execute a written agreement to extend the period of limitations on collection. The extension agreement executed in connection with the installment agreement operates to extend the period of limitations on collection to the date agreed upon in the extension agreement, plus 89 days. Subsequently, and prior to the expiration of the extended period of limitations on collection, the taxpayer files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge from bankruptcy a few months later. Assuming the tax is not discharged in the bankruptcy, section 6503(h) of the Internal Revenue Code operates to suspend the running of the previously extended period of limitations on collection for the period of time the IRS is prohibited from collecting due to the bankruptcy proceeding, and for 6 months thereafter. The new expiration date

for the IRS to collect the tax is the date agreed upon in the previously executed extension agreement, plus 89 days, plus the period during which the IRS is prohibited from collecting due to the bankruptcy proceeding, plus 6 months.

(e) *Date when levy is considered made.* The date on which a levy on property or rights to property is considered made is the date on which the notice of seizure required under section 6335(a) is given.

(f) *Effective date.* This section is applicable on September 6, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: August 22, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–14610 Filed 9–5–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 94

[Docket No.: OJP (OJP)—1368]

RIN 1121–AA63

International Terrorism Victim Expense Reimbursement Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: The Office of Justice Programs ("OJP") is finalizing the following regulation with minor modifications as a result of comments concerning the original notice of proposed rulemaking published at 70 FR 49518–49525, on August 24, 2005. This regulation implements provisions of the Victims of Crime Act of 1984 (the "VOCA") (42 U.S.C. 10601 *et seq.*), which authorize the Director of the Office for Victims of Crime ("OVC"), a component of OJP, to establish an International Terrorism Victim Expense Reimbursement Program (hereinafter referred to as the "ITVERP") to reimburse eligible "direct" victims of acts of international terrorism that occur outside the United States for "expenses associated with that victimization."

DATES: This final rule is effective October 6, 2006.

FOR FURTHER INFORMATION CONTACT: Barbara Walker, Senior Policy Analyst, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531; by telephone, at: 1–800–363–0441; or by e-mail, at: *ITVERP@usdoj.gov.*

SUPPLEMENTARY INFORMATION: As authorized by the VOCA, OVC generally provides Federal financial assistance to states for the purpose of compensating and assisting victims of crime, provides funds for training and technical assistance services for victims of Federal crime, and provides funding and services for victims of terrorism and mass violence. This program is funded by fines, fees, penalty assessments, and bond forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury.

On August 24, 2005, at 70 FR 49518, OJP published a proposed rule to implement the provisions of the (ITVERP). All comments concerning this rule were to be received by October 22, 2005. As a result of that publication, OVC received sixteen public comments. Eight of the comments came from individuals who had been victims of acts of international terrorism that occurred abroad. Two came from national victim assistance organizations, one of which represents the VOCA-funded victim assistance organizations in the fifty-six relevant jurisdictions. Three comments were from individual state victim compensation boards, one was from a Federal agency, one was from a professional trade organization, and one was from an interested individual. Other than a few syntactical or grammatical changes of a technical, non-substantive nature, after careful review of all comments, OVC has made only two minor modifications, clarifying the definition of "victim" in § 94.12(u)(2) (reworded to clarify which persons may be considered victims) and expanding the definition of "collateral source" in 94.12(c)(2).

OVC offers the following issue analysis to provide additional details on the purpose and operation of the ITVERP.

Twelve individuals or representatives of groups submitted comments regarding the scope of coverage of the program. These comments generally asked for the coverage of the program to be expanded in various ways. As detailed below, OVC thoughtfully considered each of these comments.

As noted in the Notice of Proposed Rulemaking, OVC recognizes that little or no support may be given by other countries to American nationals who are victims of acts of international terrorism events that occur abroad and that state programs differ in how they treat residents who are victimized abroad. Moreover, victims of acts of international terrorism that occur outside the United States face unique obstacles in securing assistance and support. Against this background of variation in compensation levels, the authorizing statute indicates that the major purpose of the ITVERP is to reimburse "victims of acts of international terrorism that occur outside the United States for *expenses* associated with that victimization" (42 U.S.C. 10603c(b) (emphasis added)). Thus, the program—by statute—is intended to ensure a basic level of support for immediate and out-of-pocket expenses associated with such victimization.

OVC also wishes to note that the ITVERP will cover a broader range of expenses than the types of emergency expenses that have been provided to date through the existing discretionary program operated by the FBI in conjunction with the Department of State and OVC. Some emergency claims that were previously denied may thus fall within the ITVERP's scope. Therefore, victims who have received prior emergency assistance may wish to review their prior payments in relation to the limits established by this program, and submit such additional claims to the ITVERP, if warranted.

Additional Categories and Increased Limits

Eight of the comments requested an expansion of the categories of reimbursable expenses, and one requested an increase of the limits of the existing categories. Requests for specific types of expenses are discussed below, but, as noted above, the goal of the program—by statute—is to provide a basic level of support for American nationals who are victims of acts of international terrorism that occur outside the United States. OVC encourages victims to avail themselves of additional sources of compensation, which may include reimbursements either from other sources above the ITVERP limitations or for categories of expenses not covered by the ITVERP. Closely adhering to the statutory mandate of reimbursement for expenses provides greater stability to the program. By keeping the ITVERP focused on direct, out-of-pocket expenses, consistent with the statutory authorization, OVC can ensure that funding will be available for all victims in the dreadful event that another act of international terrorism should occur overseas involving a large number of eligible victims.

Lost Wages and Loss of Support

Seven comments requested that the program be expanded to include lost wages among the reimbursable expenses. This request was often coupled with a request that the program cover loss of support. Three of these comments came from state victim compensation boards, two came from national victim assistance organizations, one came from a Federal agency, and one came from an injured victim. Three of the comments noted that although states (which cover lost wages and loss of support) are not required to compensate victims of international terrorism, many continue to do so. Thus, they conclude, such victims will need to apply to both State and Federal programs to receive compensation in those categories. The commenters point out, however, that not all state programs provide the same level of compensation.

As designed by OVC, the ITVERP sets a standard level of expense reimbursement assistance, but allows a victim to seek assistance from several sources, which necessarily means filing a claim or application for each source. Inasmuch as the program—by statute—is not intended to be comprehensive, of necessity it does not foreclose access to other sources of support or compensation. Although states are no longer required by the VOCA to provide assistance to victims of acts of international terrorism that occur outside the United States, they certainly may do so. In particular, states may offer compensation beyond the limits set by the ITVERP, or they may choose to fund categories of expenses not considered reimbursable under the ITVERP, such as lost wages and loss of support. As with noneconomic losses (such as pain and suffering or attorney's fees), lost wages and loss of support are not immediate and out-of-pocket expenses, and thus, by statute, are not covered under the ITVERP.

Family Members

Four comments (two by state victim compensation boards, one by a national victim assistance group, and one by a federal agency) either asked for clarification of the intended coverage for family members or suggested that the ITVERP's scope be expanded to define additional family members as victims. Although state compensation statutes tend to define a wider range of family members as victims, the ITVERP's authorizing statute clearly limits reimbursement to victims who "suffered direct physical or emotional injury or death" (42 U.S.C. 10603c(a)(3)(A)(i)). These "direct victims" may be reimbursed for expenses in any category up to the allowable cap.

In limited circumstances, as noted in the statute (42 U.S.C. 10603c(a)(3)(B)), and clarified in the regulation's definitions (§ 94.12(u)(2)), the following family members of persons who "suffered direct physical or emotional injury or death" may be considered victims in their own right: (1) Spouse; (2) children; (3) parents; (4) siblings; and (5) other persons at the discretion of the Director, provided such persons have established sufficient ties to the direct victim. (An example of an "other person" might be a grandparent who had been rearing a child who was killed in an act of international terrorism.) This expansion of the definition of victim occurs only in the following three circumstances: (1) When the direct victim dies as a result of the act of terrorism; (2) when the direct victim is under 18 years of age (or is incompetent or incapacitated) at the time of the act of terrorism; or (3) when the direct victim is rendered incompetent or incapacitated at the time or as a result of the act of terrorism. Because of the expense-based nature of the program, these additional victims would directly qualify only for mental health care, within the ITVERP limits. Nevertheless, a family member who is considered a victim in his own right, and thus able to file a claim for mental health counseling, may also file a claim on behalf of the direct victim if he is also the victim's representative (*i.e.*, a family member or legal guardian authorized to file the claim).

Aside from close family members who may be considered victims in their own right (see 42 U.S.C. 10603c(a)(3)(B)), family members or others may be reimbursed for expenses paid on behalf of the direct victim. Although the direct victim or one family member (or legal guardian) will be authorized to file the actual claim and receive the reimbursement, the funds may then be distributed among others who have paid for reimbursable expenses on behalf of the direct victim. Thus, for example, one family member may pay the victim's medical expenses, another may pay travel expenses for the victim, and a third may file the claim as the victim's representative. The family member filing the claim would receive the reimbursement under the ITVERP and would then act as a fiduciary to distribute the money to the appropriate family members who had actually paid the expenses.

A brief example may help to further illustrate. Suppose an individual were injured in a qualifying act of international terrorism. If the victim were not younger than 18 years of age, incompetent, incapacitated, or deceased, a single claim for reimbursable expenses could be filed by either the victim or the victim's representative. This claim could include reimbursable expenses actually paid by one or more other individuals, such as medical expenses or the travel expenses of up to two family members to assist the victim in the country where the act of terrorism took place. Although such expenses were initially paid by others, the claim for reimbursement would be based on the injury suffered by the person who is the direct victim. Other family members, such as the spouse, children, or parents of the victim, would not be eligible to file a claim on their own behalf for mental health counseling or other assistance. If the direct victim were younger than 18 years of age, incompetent, incapacitated, or deceased, then a single claim would still be made on behalf of the direct victim. This claim would still include any expenses paid by others on behalf of the victim, such as funeral expenses or the emergency travel of up to two family members. In addition, family members such as the spouse, children, parents, and siblings of the direct victim, would also be able to file individual claims for mental health counseling on their own behalf. Such additional victims would not be eligible for other expense reimbursement as part of their individual claim. They would, however, still be able to receive reimbursement for expenses paid under the claim of the direct victim.

Tuition, Childcare, and Travel Expenses

Five comments (three by victims, one from a state victim compensation board, and one from a federal agency) involved suggestions for reimbursement in categories that are already covered by the ITVERP under certain circumstances. For example, tuition payments are considered a reimbursable expense for the direct victim if the schooling is related to retraining required as a direct result of the injury. This may include, for example, training for using TDD equipment, prosthetic limbs, Braille, and other vision and physical aids. Similarly, expenses for rehabilitation training to assist victims in adjusting to a new work environment would be reimbursed under the ITVERP. (See the table in the Appendix to Subpart A for examples.)

One commenter suggested expanding this existing education coverage to include tuition for a surviving spouse to return to school. Another suggestion was for future tuition for the children of

a deceased victim. Because the ITVERP is restricted by statute to direct reimbursement to victims for actual out-of-pocket expenses resulting from the act of international terrorism, such expenses related to normal educational needs of the victim or surviving family members cannot be covered.

Along similar lines, immediate childcare costs may be considered reimbursable miscellaneous expenses when they are necessary for the children of the direct victim, or for the children of a deceased victim's family members who travel to the country where the act of international terrorism occurred to care for the victim or recover the victim's remains. Long-term childcare expenses, however, are more akin to personal expenses than immediate direct expenses attributable to the act of terrorism, and for that reason they cannot be covered by the ITVERP.

Emergency travel for up to two family members is a reimbursable miscellaneous expense in a variety of circumstances. This includes traveling to care for the direct victim or to recover the deceased victim's remains. Travel expenses will be covered to the country where the incident occurred, in most instances, but it may be to other locations depending on the circumstances (e.g., travel to a hospital in another country to which the victim has been evacuated).

Funeral and Burial Expenses

A family member of a deceased victim inquired as to the specific items allowable as funeral expenses. Reimbursable expenses include a variety of costs associated with the return and disposition of the victim's remains, including markers, flowers, and costs related to memorial services, up to the cap on costs. Activities of a religious nature that are reasonably related to funeral and burial expenses are reimbursable. Other than the category cap, the primary limitation in this category is that the expense be for a "reasonably related activity."

One comment by a professional trade group suggested that the definition of "burial costs" be expanded to be more consistent with the FTC regulatory provision on funerals (16 CFR 453 (1999)). The commenter wanted to ensure that the ITVERP regulation would not limit burial options for a family, such as the choice between an "earth burial" or cremation. As noted above, the coverage of burial costs is intended to be as inclusive as possible of all customs, cultures, and religious faiths. As an integral part of the grieving process, no family should be constrained by this program in observing appropriate burial customs in a manner and method decided by the family. To this end, and upon review of the language in the FTC rule, OVC does not believe that limiting reimbursement to the current language adopted by the FTC would be appropriate. Rather, OVC continues to read the existing language expansively, as a method to provide for wide coverage of burial expenses, consistent with the specific needs of each family. As noted previously, the ITVERP does not limit those options, other than to impose a reasonable spending cap of $25,000 for merchandise or activities reasonably related to funeral and burial costs, which can be directed according to the wishes of the family.

Interim Emergency Payments

One commenter, a victim of international terrorism, requested that the program make interim emergency payments. The ITVERP already allows for interim emergency payments when the Director of OVC determines such payment is necessary to avoid or mitigate substantial hardship. Once the ITVERP becomes operational, such interim emergency payments will be possible for victims of future acts of international terrorism.

Insurance

One comment by a victim pointed out that insurance carriers exclude costs associated with acts of international terrorism, or may cancel policies following a terrorist event. Changes to insurance industry practices would need to be effected by other legislative action and are beyond the purview of these regulations.

Taxes

One victim suggested that under the ITVERP any final taxes owed by a deceased victim should be forgiven by the Internal Revenue Service, as they were for victims of the 9/11 attacks and the Oklahoma City bombing. Although the Victims of Terrorism Tax Relief Act of 2001 currently forgives final taxes for deceased victims of specified terrorist attacks, coverage with respect to other acts of international terrorism outside the United States would require an amendment to the Act or new legislation.

Individuals receiving reimbursements under the ITVERP should consult the Internal Revenue Service (and state taxing authorities, as appropriate) to determine the tax status of such reimbursements. The IRS has in the past limited tax exposure in situations of state compensation payments. It is anticipated that once OJP adopts final regulations for the ITVERP program, OVC will request that the IRS independently determine the appropriate tax status for expense reimbursements under the ITVERP.

Category Caps

Five comments (three from victims, one from a Federal agency, and one from an interested individual) suggested that some or all of the category caps were too low, particularly for the mental health category. The purpose of the ITVERP is to help victims mitigate certain economic losses occasioned by the terrorist event. Placing caps on reimbursement categories helps to ensure that funds will be available for future victims of international terrorism abroad. By statute, the program is not designed to insure against all losses. For example, reimbursement for property loss is intended to help victims replace items that are necessary for immediate daily living. The expectation is that families living abroad or on extended travel would avail themselves of the opportunity to purchase additional medical or travel insurance and insure items of substantial value (e.g., home, household goods, automobile). Similarly, funding for mental health counseling is intended to provide immediate counseling intervention, not long-term therapy. As with lost wages, which are not reimbursable under the ITVERP, programs funded under the Victims of Crime Act of 1984 (VOCA) may provide compensation in additional categories or in amounts above the ITVERP caps, and victims are encouraged to apply to such state programs.

Collateral Sources

Seven of the comments (three from state victim compensation boards, one from a national victim advocacy group, one from a federal agency, and two from victims) were related to collateral sources as defined in § 94.12(c) and described in § 94.25. Four of the comments requested clarification of the relationship between the ITVERP and state compensation programs. Two comments concerned payments received from a foreign government. The seventh comment concerned prior payments made under another Federal statute.

The Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56, eliminated the requirement for state crime victim compensation programs to pay compensation to victims in cases of international terrorism abroad. Accordingly, the ITVERP is the primary

federally-funded reimbursement source for these victims. State crime victim compensation programs may elect to continue to provide compensation to victims of international terrorism abroad in categories not covered under the ITVERP, or in amounts beyond the ITVERP's category caps. If a state chooses to compensate residents who are victims of international terrorism outside the United States, it does so as a payer of last resort. Although the state may consider federal ITVERP payments as collateral source payments that diminish its payment obligations, state supplemental compensation payments will not reduce Federal payment obligations. In other words, if the state chooses to provide additional payments to victims who have received specific payments under the ITVERP, those payments will be considered supplemental support and not collateral sources for purposes of the Federal program. If the ITVERP and the state program provide reimbursement for identical expenses, the ITVERP is considered the initial payer. Moreover, international terrorism victims are not required to apply to state compensation programs before filing an application for reimbursement under the ITVERP. This policy is in line with the current practice and permits state compensation programs to retain their status as the payers of last resort.

For example, suppose that after an international terrorist event a victim were to apply for and receive full reimbursement under an ITVERP category, but outstanding expenses remain. A state compensation program is not required by VOCA to make additional payments under that category. The state may, however, elect to make supplemental payments (under that category) to the victim. Additionally, for expenses under categories that are not covered under the ITVERP, the state compensation programs may continue to reimburse the victim within the state's approved limit. Furthermore, any such supplemental or additional payments may be counted in a state's certified payout of victim compensation expenses, and therefore eligible for inclusion in the calculation of future state compensation awards under VOCA.

Two comments (both from victims) asked for clarification of the extent to which payments from a foreign government would affect ITVERP payments to victims. One commenter suggested that the regulations would cause hardship to victims if foreign payments are counted as collateral sources. Section 94.25 of the regulation specifically provides that any payment from the United States or a foreign government in the form of general compensation (e.g., a lump sum or structured payment) will be considered a collateral source. As such, an award under the ITVERP would be reduced by the amount of payment(s) by the foreign government (or the claimant would subrogate the United States to the extent of the ITVERP award if it is paid first). If, however, the payment from the United States or a foreign government is for reimbursement of a specific category of expenses that is not covered under the ITVERP or is a supplemental reimbursement beyond the ITVERP category cap, the reimbursement will not be considered a collateral source, and will not reduce the reimbursement the claimant receives from the ITVERP. Although unsatisfied judgments against foreign governments may be collateral sources under the final rule, in principle the ITVERP award is not intended to limit victims' options in seeking collateral source payments from other sources to cover otherwise non-compensated expenses. The intent is to ensure that funds are available to reimburse the basic expenses of victims, by not allowing the receipt of money from more than one source to cover the same expense. This may result in a slight reduction in reimbursements for some victims. In any event, further to the foregoing discussion (and comments from the Department of State), some clarifying changes have been made to the definition of *collateral sources* in the final rule.

ITVERP is an expense reimbursement program. As such, ITVERP funds are available to reimburse the victim for specific expenses (as opposed to a general compensation program). To ensure fiscal integrity, the program is designed to prevent duplication of payments. Thus, reimbursements by collateral sources for specific expenses below the cap are not exempted as there can only be one reimbursement for each specific expense. Nevertheless, the intent is that under no circumstances should total reimbursements under ITVERP exceed actual expenses. Where expenses are less than the ITVERP reimbursement plus any collateral sources, the claimant would be required to return the excess ITVERP payment. In the event that expenses are covered by another source, the claimant cannot be reimbursed for the same expense under ITVERP.

A comment from a Federal agency expressed concern about whether victims might receive a compensatory damage award from another Federal government source, such as the U.S. Treasury, and still be eligible for reimbursement under the ITVERP. As noted above, a victim would not be eligible under § 94.25 to receive reimbursement from the ITVERP for an expense for which he has already received reimbursement. Compensatory damage awards, by definition, typically make payment based on specific losses incurred. In cases where there are such awards, the ITVERP would not reimburse a victim for those expenses already covered by the award. If, however, a Federal government payment constituted supplemental reimbursement for a specific expense beyond the maximum amount reimbursed for that expense covered by the ITVERP, such payment would not be considered a collateral source, and would not diminish the amount to which a victim would otherwise be entitled under the ITVERP.

Victims Covered

One comment by a victim indicated concern that the ITVERP would be uniformly applied to United States citizens as well as eligible noncitizens. The ITVERP statute specifically defines "victim" to include someone who is "a national of the United States or an officer or employee of the United States Government," 42 U.S.C. 10603c(a)(3)(A)(ii), which expressly includes certain non-citizens. In addition, as previously noted in the section on *Family Members*, if the direct victim was younger than 18 years of age, incompetent, incapacitated, or deceased, additional family members would be considered victims for purposes of obtaining mental health counseling (42 U.S.C. 10603c(a)(3)(B)). Such family members need not be United States citizens or officers or employees of the United States to be eligible. The commenter also questioned whether reimbursement should be available only to innocent victims. The statute addresses this issue by creating an express statutory exception that "in no event shall an individual who is criminally culpable for the terrorist act or mass violence receive any compensation under this section, either directly or on behalf of a victim" (42 U.S.C. 10603c(a)(3)(C)).

Application Requirements

Three comments (one from a national victim assistance group, one from a federal agency, and the third from a victim) related to application procedures. The national organization expressed its support for the statutory provision allowing retroactive filing of claims back to December 1988, and for the provision allowing for extensions (at the discretion of the Director) of the

three-year deadline for filing applications (see § 94.32).

The national organization and the victim suggested that it was difficult for claimants who may be operating in a state of shock to remember to retain original receipts, especially after a substantial amount of time has elapsed. Although the regulation requires original receipts for the expenses to be reimbursed, § 94.31 takes into account situations where original receipts may not be available. In such cases (at the discretion of the Director of OVC), the claimant may submit an itemized list of expenses along with a certification that the original receipts are unavailable and a statement attesting that the items and amounts submitted in the application are true and correct to the best of the claimant's knowledge.

Confidentiality

One of the state victim compensation boards submitted a comment expressing concern about the confidentiality of the information submitted by the claimants. Specifically, the commenter was concerned that the initial ITVERP application, any supporting documents, and the appeal material would become a public record. The organization was concerned that measures should be taken to safeguard the privacy of the victim and the victim's family.

Application materials and other supporting documents received from claimants will be maintained in accordance with the U.S. Department of Justice's applicable Privacy Act System of Records notice. The Freedom of Information Act contains an exemption that protects the privacy rights of individuals by prohibiting the disclosure of information that would constitute a clearly unwarranted invasion of privacy. In addition, 42 U.S.C. 10604(d) specifically prevents release of such information, except pursuant to Federal law.

Emergency Responders

Two comments (one from a national victim assistance organization and one from an interested individual) requested additional clarification of the term "emergency responder." Section 94.41(u)(1) indicates that "victim" has the meaning given in 42 U.S.C. 10603c(a)(3)(A). Because of the statutory requirement of "direct physical or emotional injury as a result of international terrorism," the term "victim" is understood to include three basic groups of individuals (all of whom are required by the Statute to be either United States nationals, or officers or employees of the United States Government): (1) Those who were present during the act of terrorism (i.e., those who might be thought of as traditional victims); (2) individuals who were present during the immediate aftermath of the act which would include those who immediately assist at the site (e.g., "good Samaritans"); and (3) emergency responders who assisted in efforts to search for and recover other victims. The common definition of "emergency responders" includes those who are mission-essential personnel involved in the search and rescue or recovery of other victims. Traditionally, this includes police officers, firefighters, and medical personnel engaged in these activities. Others may also be included depending on the circumstances of the act of terrorism; for example, if the act resulted in a collapsed building, structural engineers and construction workers would likely be directly involved in the rescue and recovery efforts.

Claim Filing

One comment by a state victim compensation board requested clarification regarding whether multiple claims may be opened in the name of one victim, and if not, how the ITVERP would select the qualified claimant for each victim. As an expense reimbursement program, the ITVERP is designed to ensure that those who pay for certain expenses on behalf of a victim are reimbursed. There must be some limitation, however, to reduce the administrative burden in implementing this program, while at the same time ensuring that the appropriate individuals are reimbursed. The regulation establishes an effective system for achieving those goals by requiring, except in extraordinary circumstances, that a single claim be filed by each individual victim (or his representative if the victim is younger than 18 years of age, incompetent, incapacitated, or deceased). For that reason, there shall ordinarily be only one claimant with respect to each victim. A claimant submitting a claim for reimbursement as the victim's representative must certify that he is a family member or legal guardian authorized to submit the claim. When multiple sources have contributed toward payment of the victim's expenses, limiting reimbursement to a single claimant entrusts the victim (or the victim's representative) with the fiduciary obligation to distribute reimbursements, as appropriate, within the funding caps of the regulation.

The only exception to the principle of a single claimant or previously-authorized representative relates to interim emergency payments. Section 94.41 of the regulation allows for the possibility that in emergency situations there may be a need for others, such as a family member or consular officer, to submit a claim on behalf of the victim, to facilitate immediate treatment or travel. In such emergency situations, the claimant is considered a representative of the victim for that limited emergency purpose only. After the emergency has passed, the victim (or his representative, if the victim is younger than 18 years of age, incompetent, incapacitated, or deceased) would be substituted as the claimant and would submit all subsequent or supplemental claims.

As previously noted in the *Family Members* section, if the direct victim is younger than 18 years of age, incompetent, incapacitated, or deceased, § 94.12(u)(2) specifies those family members who may also be considered victims. In such cases, these additional victims are eligible for reimbursement for mental health counseling and could file individual claims in their own right.

State Department Handling of Funds

One comment by a state victim compensation board requested clarification regarding how a U.S. Embassy would handle the collection and distribution of funds on behalf of a victim in the limited circumstance when a consular officer is authorized to file a claim on behalf of a victim. The commenter specifically wondered if the funds would be put in trust for the victim. Section 94.12(t) specifies that a U.S. consular officer or U.S. embassy official may receive money on behalf of a victim only if "no family member or legal guardian is available to file a claim for an interim emergency payment on behalf of a victim under § 94.41." A review of instances in which a U.S. consular officer would need to file for such emergency expenses confirms that all such transfers are expected to occur according to currently established U.S. Department of State rules, which require strict accountability through use of a trust. Because the Department of State has already established strict accountability rules to govern the disbursement of funds on behalf of American citizens abroad, the Department of Justice will honor those rules in implementing the ITVERP.

In the rare circumstance in which the amount of funds in an emergency disbursement exceeds the actual amount necessary (e.g., medical evacuation costs were less than expected), excess funds would be transferred back to the Antiterrorism Emergency Reserve of the Crime Victims Fund. Those funds would again be available for

supplemental claims, provided the expenses were under the cap for that category.

Travel Warnings

One comment from an interested individual expressed concern that the eligibility restriction found in § 94.21(c)(3)(iii) would exclude all victims of an act of international terrorism if the act occurred in a country for which the Department of State has issued a travel warning. Although § 94.21(c)(3)(iii) indicates a restriction of eligibility based on travel warnings, the restriction depends on two pre-conditions. First, § 94.21(c)(3) requires that the victim "(As a non-U.S. Government employee), [was] acting as an advisor, consultant, employee, or contractor, in a military or political capacity." Thus, U.S. Government employees would not be excluded by the restriction of § 94.21(c)(3); in addition, a non-U.S. Government employee would be eligible unless that individual were working in a military or political capacity. Second, the § 94.21(c)(3)(iii) restriction applies only to countries where the travel warning was issued in relation to "armed conflict." The Department of State maintains a list of countries for which it has issued travel warnings, some of which relate to armed conflict and others of which do not; these warnings may be accessed via the Internet at *http://www.travel.state.gov/travel.* (Please note that under § 94.21(c)(4) eligibility is predicated on the fact that a victim has not engaged in grossly reckless conduct which contributed materially to his death or injury.)

For example, the Department of State issued a travel warning for Nigeria on December 1, 2005, based on "increasing crime in Lagos, as well as unrest in the Delta"; in contrast, the travel warning issued on November 22, 2005, for Haiti was based on concern over "violent confrontations between armed groups": If an incident were declared an act of international terrorism, the warning for Nigeria would not trigger a restriction in eligibility under the ITVERP, but the warning for Haiti could trigger a restriction on eligibility if the non-U.S. employee was acting as an advisor, consultant, employee, or contractor, in a military or political capacity.

Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Exec. Order No. 12866, section 1(b), 58 FR 51, 735 (Sept. 30, 1993), Principles of Regulation. OJP has determined that this regulation is a "significant regulatory action" under Executive Order No. 12866, and accordingly, this regulation has been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Exec. Order No. 13132, 64 FR 43, 255 (Aug. 4, 1999), it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Cost/Benefit Assessment

This regulation has no cost to state, local, or tribal governments, or to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury, and set aside in the Antiterrorism Emergency Reserve Fund, whose funds may not be obligated in an amount above $50 million in any given year. The cost to the Federal Government consists both of administrative expenses and amounts reimbursed to victims. Both types of costs depend on the number of claimants, prospective as well as retroactive. Although spending is anticipated to be higher in the initial years as a result of the number of potential retroactive claimants (approximately 900), the program will not spend more than the statutory maximum of $50 million each year.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This regulation has no cost to State, local, or tribal governments, or to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and bond forfeitures paid by Federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury. Therefore, an analysis of the impact of this regulation on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1995

The collection of information requirements contained in this regulation has been submitted to the Office of Management and Budget, pursuant to the Paperwork Reduction Act (44 U.S.C. 3506). Applicants seeking reimbursement from this program will be required to submit an official application form (the International Terrorism Victim Expense Reimbursement Program Application), that has been created by OVC. This application is a new information collection instrument that will be used to collect necessary information from and about the victims and claimants regarding expenses incurred by them, to be used by OVC in making a reimbursement determination. The total number of initial respondents (including both direct victims and family members) for this collection is estimated to be 2,000. This represents the estimated number of claimants who are currently eligible to request reimbursement under the ITVERP. The total initial public burden associated with this initial information collection is estimated to be approximately 1,500 hours. The amount of time for an average respondent to respond/reply is estimated to be approximately 45 minutes.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Part 94

Administrative practice and procedures, International terrorism, Victim compensation.

Accordingly, for the reasons set forth in the preamble, Title 28 of the Code of Federal Regulations is amended to add a new part 94, to read as follows:

PART 94—CRIME VICTIM SERVICES

Subpart A—International Terrorism Victim Expense Reimbursement Program

Introduction

Sec.

Coverage

Authority: Victims of Crime Act (VOCA), Title II, Secs. 1404C and 1407 (42 U.S.C. 10603c, 10604).

Subpart A—International Terrorism Victim Expense Reimbursement Program

Introduction

§ 94.11 Purpose; construction and severability.

(a) The purpose of this subpart is to implement the provisions of VOCA, Title II, Sec. 1404C (42 U.S.C. 10603c), which authorize the Director (Director), Office for Victims of Crime (OVC), a component of the Office of Justice Programs (OJP), to establish a program to reimburse eligible victims of acts of international terrorism that occur outside the United States, for expenses associated with that victimization.

(b) Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this part and shall not affect the remainder thereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

§ 94.12 Definitions.

The following definitions shall apply to this subpart:

(a) *Child* means any biological or legally-adopted child, or any stepchild, of a deceased victim, who, at the time of the victim's death, is—

(1) Younger than 18 years of age; or

(2) Over 18 years of age and a student, as defined in 5 U.S.C. 8101.

(b) *Claimant* means a victim, or his representative, who is authorized to sign and submit an application, and receive payment for reimbursement, if appropriate.

(c) *Collateral sources* means sources that provide reimbursement for specific expenses compensated under this subpart, including property, health, disability, or other insurance for specific expenses; Medicare or Medicaid; workers' compensation programs; military or veterans' benefits of a compensatory nature; vocational rehabilitation benefits; restitution; and other state, Federal, foreign, and international compensation programs: except that any reimbursement received under this subpart shall be reduced by the amount of any lump sum payment whatsoever, received from, or in respect of the United States or a foreign government, unless the claimant can show that such payment was for a category of expenses not covered under this subpart. To the extent that a claimant has an unsatisfied judgment against a foreign government based on the same act of terrorism, the value of that unsatisfied judgment shall be counted as a lump sum payment for expenses covered under this subpart, unless the claimant agrees to waive his right to sue the United States government for satisfaction of that judgment.

(d) *Deceased means* individuals who are dead, or are missing and presumed dead.

(e) *Dependent* has the meaning given in 26 U.S.C. 152. If the victim was not required by law to file a U.S. Federal income tax return for the year prior to the act of international terrorism, an individual shall be deemed to be a victim's dependent if he was reliant on the income of the victim for over half of his support in that year.

(f) *Employee of the United States Government* means any person who—

(1) Is an employee of the United States government under Federal law; or

(2) Receives a salary or compensation of any kind from the United States Government for personal services directly rendered to the United States, similar to those of an individual in the United States Civil Service, or is a contractor of the United States Government (or an employee of such contractor) rendering such personal services.

(g) *Funeral and burial* means those activities involved in the disposition of the remains of a deceased victim, including preparation of the body and body tissue, refrigeration, transportation, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably-associated activities, including travel for not more than two family members.

(h) *Incapacitated* means substantially impaired by mental illness or deficiency, or by physical illness or disability, to the extent that personal decision-making is impossible.

(i) *Incompetent* means unable to care for oneself because of mental illness or disability, mental retardation, or dementia.

(j) *International terrorism* has the meaning given in 18 U.S.C. 2331. As of the date of these regulations, the statute defines the term to mean "activities that—

(1) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

(2) Appear to be intended—

(i) To intimidate or coerce a civilian population;

(ii) To influence the policy of a government by intimidation or coercion; or

(iii) To affect the conduct of a government by mass destruction, assassination, or kidnaping; and

(3) Occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum."

(k) *Legal guardian* means legal guardian, as the term is defined under the laws of the jurisdiction of which the ward is or was a legal resident, except that if the ward is or was a national of the United States, the legal guardianship must be pursuant to an order of a court of competent jurisdiction of or within the United States.

(l) *Medical expenses* means costs associated with the treatment, cure, or mitigation of a disease, injury, or mental or emotional condition that is the result of an act of international terrorism. Allowable medical expenses include reimbursement for eyeglasses or other corrective lenses, dental services, rehabilitation costs, prosthetic or other medical devices, prescription medication, and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered.

(m) *Mental health* care means mental health care provided by an individual who meets professional standards to provide these services in the jurisdiction in which the care is administered.

(n) *National of the United States* has the meaning given in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)). As of the date of these regulations, the statute defines the term to mean "(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States."

(o) *Officer of the United States government* has the meaning given in 5 U.S.C. 2104.

(p) *Outside the United States* means outside any state of the United States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other possession or territory of the United States.

(q) *Parent* means a biological or legally-adoptive parent, or a step-parent, unless his parental rights have been terminated in the jurisdiction where the child is or was a legal resident, except that if the child or either parent is a national of the United States, the termination must be pursuant to an order of a court of competent jurisdiction of or within the United States.

(r) *Property loss* refers to items of personal property (other than medical devices, which are included in the category of "medical expenses") that are lost, destroyed, or held as evidence.

(s) *Rehabilitation costs* includes reasonable costs for the following: physiotherapy; occupational therapy; counseling, and workplace, vehicle, and home modifications.

(t) *Representative* means a family member or legal guardian authorized to file a claim on behalf of a victim who is younger than 18 years of age, incompetent, incapacitated, or deceased, except that no individual who was criminally culpable for the act of international terrorism shall be considered a representative. In the event that no family member or legal guardian is available to file a claim for an interim emergency payment on behalf of a victim, under § 94.41, a U.S. consular officer or U.S. embassy official within the country may act as a representative, consistent with any limitation on his authority contained in 22 CFR 92.81(b).

(u) *Victim* has the meaning given in 42 U.S.C. 10603c(a)(3)(A), it being understood that the term "person" in that section means the following:

(1) (i) An individual who was present during the act of terrorism;

(ii) An individual who was present during the immediate aftermath of the act of terrorism; or

(iii) An emergency responder who assisted in efforts to search for and recover other victims; and

(2) The spouse, children, parents, and siblings of a victim described in paragraph (u)(1) of this Section, and other persons, at the discretion of the Director, shall be considered "victims", when the person described in such paragraph—

(i) Dies as a result of the act of terrorism;

(ii) Is younger than 18 years of age (or is incompetent or incapacitated) at the time of the act of terrorism, or;

(iii) Is rendered incompetent or incapacitated as a result of the act of terrorism.

§ 94.13 Terms.

The first three provisions of 1 U.S.C. 1 (rules of construction) shall apply to this subpart.

Coverage

§ 94.21 Eligibility.

(a) Except as provided in paragraphs (b) and (c) of this section, reimbursement of qualified expenses under this subpart is available to a victim of international terrorism or his representative, pursuant to 42 U.S.C. 10603c(a)(3)(A). For purposes of eligibility for this program only, the Attorney General shall determine whether there is a reasonable indication that an act was one of international terrorism, within the meaning of that section.

(b) Reimbursement shall be denied to any claimant if the Director, in consultation with appropriate Department of Justice (DOJ) officials, determines that there is a reasonable indication that either the victim with respect to whom the claim is made, or the claimant, was criminally culpable for the act of international terrorism.

(c) Reimbursement may be reduced or denied to a claimant if the Director, in consultation with appropriate DOJ officials, determines that the victim with respect to whom the claim is made contributed materially to his own death or injury by—

(1) Engaging in conduct that violates U.S. law or the law of the jurisdiction in which the act of international terrorism occurred;

(2) Acting as a mercenary or "soldier of fortune";

(3) (As a non-U.S. Government employee), acting as an advisor, consultant, employee, or contractor, in a military or political capacity—

(i) For a rebel or paramilitary organization;

(ii) For a government not recognized by the United States; or

(iii) In a country in which an official travel warning issued by the U.S. Department of State related to armed conflict was in effect at the time of the act of international terrorism; or

(4) Engaging in grossly reckless conduct.

§ 94.22 Categories of expenses.

The following categories of expenses, generally, may be reimbursed, with some limitations, as noted in § 94.23: medical care; mental health care; property loss; funeral and burial; and miscellaneous expenses (including temporary lodging, emergency travel, and transportation). Under this subpart, the Director shall not reimburse for attorneys' fees, lost wages, or non-economic losses (such as pain and suffering, loss of enjoyment of life, loss of consortium, etc.).

§ 94.23 Amount of reimbursement.

Different categories of expenses are capped, as set forth in the chart below. Those caps may be adjusted, from time to time, by rulemaking. The cap in effect within a particular expense category, at the time that the application is received, shall apply to the award.

§ 94.24 Determination of award.

After review of each application, the Director shall determine the eligibility of the victim or representative and the amount, if any, eligible for reimbursement, specifying the reasons for such determination and the findings of fact and conclusions of law supporting it. A copy of the determination shall be mailed to the claimant at his last known address.

§ 94.25 Collateral sources.

(a) The amount of expenses reimbursed to a claimant under this subpart shall be reduced by any amount that the claimant receives from a collateral source in connection with the same act of international terrorism. In cases in which a claimant receives reimbursement under this subpart for expenses that also will or may be reimbursed from another source, the claimant shall subrogate the United States to the claim for payment from the collateral source up to the amount for which the claimant was reimbursed under this subpart.

(b) Notwithstanding paragraph (a) of this section, when a collateral source provides supplemental reimbursement for a specific expense, beyond the maximum amount reimbursed for that expense under this subpart, the claimant's award under this subpart shall not be reduced by the amount paid by the collateral source, nor shall the

claimant be required to subrogate the United States to the claim for payment from the collateral source, except that in no event shall the combined reimbursement under this subpart and any collateral source exceed the actual expense.

Program Administration

§ 94.31 Application procedures.

(a) To receive reimbursement, a claimant must submit a completed application under this program requesting payment based on an itemized list of expenses, and must submit original receipts.

(b) Notwithstanding paragraph (a) of this Section, in cases involving incidents of terrorism preceding the establishment of this program where claimants may not have original receipts, and in cases in which the claimant certifies that the receipts have been destroyed or lost, the Director may, in his discretion, accept an itemized list of expenses. In each such case, the claimant must certify that original receipts are unavailable and attest that the items and amounts submitted in the list are true and correct to the best of his knowledge. In the event that it is later determined that a fraudulent certification was made, the United States may take action to recover any payment made under this section, and pursue criminal prosecution, as appropriate.

§ 94.32 Application deadline.

The deadline for an application is three years from the date of the act of international terrorism. At the discretion of the Director, the deadline for filing a claim may be extended to a date not later than three years from the date of the determination that there is a reasonable indication that an act of international terrorism has occurred, under § 94.21(a). For claims related to acts of international terrorism that occurred after December 21, 1988, but before the establishment of this program, the application deadline is three years from the effective date of these regulations.

§ 94.33 Investigation and analysis of claims.

The Director may seek an expert examination of claims submitted if he believes there is a reasonable basis for requesting additional evaluation. The claimant, in submitting an application for reimbursement, authorizes the Director to release information regarding claims or expenses listed in the application to an appropriate body for review. If the Director initiates an expert review, no identifying information for the victim or representative shall be released.

Payment of Claims

§ 94.41 Interim emergency payment.

Claimants may apply for an interim emergency payment, prior to a determination under § 94.21(a). If the Director determines that such payment is necessary to avoid or mitigate substantial hardship that may result from delaying reimbursement until complete and final consideration of an application, such payment may be made to cover immediate expenses such as those of medical care, funeral and burial, short-term lodging, and emergency transportation. The amount of an interim emergency payment shall be determined on a case-by-case basis, and shall be deducted from the final award amount.

§ 94.42 Repayment and waiver of repayment.

A victim or representative shall reimburse the program upon a determination by the Director that an interim emergency award or final award was: Made to an ineligible victim or claimant; based on fraudulent information; or an overpayment. Except in the case of ineligibility pursuant to a determination by the Director, in consultation with appropriate DOJ officials, under § 94.21(b), the Director may waive such repayment requirement in whole or in part, for good cause, upon request.

Appeal Procedures

§ 94.51 Request for reconsideration.

A victim or representative may, within thirty (30) days after receipt of the determination under § 94.24, appeal the same to the Assistant Attorney General for the Office of Justice Programs, by submitting a written request for review. The Assistant Attorney General may conduct a review and make a determination based on the material submitted with the initial application, or may request additional documentation in order to conduct a more thorough review. In special circumstances, the Assistant Attorney General may determine that an oral hearing is warranted; in such cases, the hearing shall be held at a reasonable time and place.

§ 94.52 Final agency decision.

In cases that are not appealed under § 94.51, the Director's determination pursuant to § 94.24 shall be the final agency decision. In all cases that are appealed, the Assistant Attorney General shall issue a notice of final determination, which shall be the final agency decision, setting forth the findings of fact and conclusions of law supporting his determination.

Appendix to Subpart A—International Terrorism Victim Expense Reimbursement Program (ITVERP); Chart of Expense Categories and Limits

There are five major categories of expenses for which claimants may seek reimbursement under the ITVERP: (1) Medical expenses, including dental and rehabilitation costs; (2) Mental health care; (3) Property loss, repair, and replacement; (4) Funeral and burial costs; and (5) Miscellaneous expenses.

Expense categories	Subcategories and conditions	Expense limits
Medical expenses, including dental and rehabilitation costs.	Victim's medical care, including, without limitation, treatment, cure, and mitigation of disease or injury; replacement of medical devices, including, without limitation, eyeglasses or other corrective lenses, dental services, prosthetic devices, and prescription medication; and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered.. Victim's cost for physiotherapy; occupational therapy; counseling; workplace, vehicle, and home modifications.. For example, if a victim were to sustain a physical injury, such as blindness or paralysis, which would affect his ability to perform current professional duties, physical rehabilitation to address work skills would be appropriate.	Up to $50,000.

Expense categories	Subcategories and conditions	Expense limits
Mental health care	Victim's (and, when victim is a minor, incompetent, incapacitated, or deceased, certain family members') mental health counseling costs.	Up to 12 months, but not to exceed $5,000.
Property loss, repair, and replacement	Includes crime scene cleanup, and replacement of personal property (not including medical devices) that is lost, destroyed, or held as evidence.	Up to $10,000 to cover repair or replacement, whichever is less.
Funeral and burial costs	Includes, without limitation, the cost of disposition of remains, preparation of the body and body tissue, refrigeration, transportation of remains, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably associated activities.	Up to $25,000.
Miscellaneous expenses	Includes, without limitation,. temporary lodging up to 30 days, local transportation, telephone costs, etc.; with respect to emergency travel, two family members' transportation costs to country where incident occurred (or other location, as appropriate) to recover remains, care for victim, care for victim's dependents, accompany victim to receive medical care abroad, accompany victim back to U.S., and attend to victim's affairs in host country.	Up to $15,000.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Dated: August 28, 2006.

Regina B. Schofield,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. E6–14678 Filed 9–5–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM15

New and Material Evidence

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) rules regarding the reconsideration of decisions on claims for benefits based on newly discovered service records received after the initial decision on a claim. The revision will provide consistency in adjudication of certain types of claims.

DATES: *Effective Date:* This amendment is effective October 6, 2006.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington DC 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: On June 20, 2005, VA published in the **Federal Register** (70 FR 35388) a proposal to revise VA's rules regarding the reconsideration of decisions on claims for benefits based on newly discovered service records received after the initial decision on a claim. Interested persons were invited to submit written comments on or before August 19, 2005. We received comments from the National Organization of Veterans' Advocates and three members of the public.

We are making two changes to 38 CFR 3.156(c)(2) based on internal agency reconsideration. First, we are revising the title of the Joint Services Records Research Center (JSRRC). In the proposed rulemaking, we stated the title as Center for Research of Unit Records (CRUR), which is incorrect. Instead, we will state the correct title in the regulation, which is Joint Services Records Research Center. Second, we are inserting the word "because" after ", or" in the first sentence of § 3.156(c)(2) to improve readability. We are not altering the substantive content of the paragraph by making these changes.

One commenter stated that she supported this rulemaking and that clarification of the rules currently in § 3.156 is needed. We appreciate this comment and believe that this rulemaking will improve the clarity of that regulation.

One commenter stated that in the proposed rule, we use the phrase "whichever is later" in numerous places. The commenter stated that if we are clarifying retroactive effective dates, the term should be "former", as it would mean "before the date VA uses to base the effective date."

At § 3.156(c)(3), the proposed regulation states:

> An award made based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.

As stated in the proposed rulemaking, proposed § 3.156(c)(2) is derived from current 38 CFR 3.400(q), regarding effective dates for awards based on new and material evidence. Section 3.400, VA's regulation regarding effective dates, uses the terminology "date of receipt of the claim or the date entitlement arose, whichever is the later." This language is derived from 38 U.S.C. 5110, the authorizing statute for effective dates, which states that "the effective date of an award * * * shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor." The statute and the current regulation thus require that the effective date of the award be the later of the date of entitlement or the date VA received the application for the benefit. As such, the use of the term "later" in the proposed regulation is consistent with the statute and VA's long-standing terminology regarding effective dates. We believe the phrase "whichever is later" is well understood by claimants, their representatives, and VA staff. We therefore make no change based on this comment.

One commenter stated that VA should clearly define the phrases "effective on the date entitlement arose or the date VA received the previously denied claim, whichever is later," "or such other date", and "except as it may be affected by the filing date of the initial claim."

These phrases, from proposed § 3.156(c)(3) and (4), all are based on language from VA's regulation regarding effective dates, § 3.400. In the proposed regulation, we are conforming the effective date provision to VA's existing regulations regarding effective dates. We believe these terms are well understood by claimants, their representatives, and VA staff. The meaning of the phrase "effective on the date entitlement arose or the date VA received the previously denied claim, whichever is later," is discussed above and we do not believe further clarification is needed as to that phrase.

As to the second phrase referenced by the commenter, proposed § 3.156(c)(3) would state that the effective date of an award based on newly discovered service department records is the date entitlement arose or the date VA received the previously decided claim, whichever is later, or "such other date as may be authorized by the provisions of this part applicable to the previously decided claim." Certain VA regulations authorize effective dates other than the date entitlement arose or the date VA received the claim. For example, if a claim for disability compensation was received within one year of separation from service, the effective date under 38 CFR 3.400(b)(2)(i) may be the day following separation from service. The reference to "such other date" merely indicates that VA will apply such effective-date provisions when they are controlling with respect to the previously decided claim.

As to the third phrase, proposed § 3.156(c)(4) states that, when an award is made based on new service department records, the disability rating assigned by VA for any past period will accord with the medical evidence of record "except insofar as [the rating] may be affected by the date of the initial claim." This limitation merely reflects the rule, discussed above, that the effective date of any award or rating may be affected by the date of the initial claim for benefits. Because we believe these three phrases are sufficiently clear, we make no change based on this comment.

This commenter additionally expressed concern with proposed paragraph (c)(2), which states that VA cannot reconsider a claim under paragraph (c)(1) based on records that "did not exist when VA decided the claim." The commenter asks how it is possible that records of a veteran could not exist, and seems to ask how it is possible that relevant records could be created after a claim has been denied. In proposed paragraph (c)(2), we are referring to records such as modified discharges and corrected military records. The effective date of an award based on such evidence is controlled by 38 U.S.C. 5110(i) and is beyond the scope of this rule. Hence, proposed paragraph (c)(2) expressly states that the proposed regulation does not apply in such cases. Therefore, we make no change based on this comment.

One commenter addressed the provision in the proposed rule at § 3.156(c)(2), which states that the provisions of subsection (c)(1) will not apply when the claimant fails to provide sufficient information for VA to identify and obtain the records. The commenter stated that this language is contrary to VA's duty to assist under 38 U.S.C. 5103A(c)(1). The commenter asserted that this statute limits VA's duty to obtain some records unless the claimant has furnished information sufficient to locate the records, but contains no limitation on the duty of VA to obtain service medical records.

As an initial matter, we note that this rule does not purport to define the scope of VA's duty to assist claimants under section 5103A. Rather, the purpose of this rule is to clarify long-standing VA rules, issued pursuant to the Secretary's general authority under 38 U.S.C. 501(a), which authorize VA to award benefits retroactive to the date of a previously decided claim when newly discovered service department records are received. The scope of this rule is not intended to be coextensive with the scope of VA's duty to assist claimants. Section 5103A, as enacted in 2000 by the Veterans Claims Assistance Act of 2000 (VCAA), Public Law No. 106–475, requires VA to assist claimants in obtaining evidence to substantiate their claims, including service medical records. If VA fails to provide such assistance in any claim to which that law applies, a claimant may seek direct administrative or judicial review to ensure VA's compliance with section 5103A. This rule will not affect any individual's rights under section 5103A. The provisions of section 3.156(c), which predate by decades the enactment of the VCAA, do not prescribe rights or duties concerning VA assistance in developing evidence but, rather, prescribe standards for reopening previously denied claims and establishing the effective dates of awards in such reopened claims. Because this rule does not affect any claimant's rights under 38 U.S.C. 5103A, it does not conflict with section 5103A.

Further, we believe that newly discovered service medical records ordinarily would provide a basis for retroactive benefits in disability compensation claims under this rule as proposed, if the provisions of the rule are otherwise met. Proposed § 3.156(c)(2) refers to circumstances in which the claimant failed to provide information sufficient for VA to identify and obtain the records at issue. When a claim for disability benefits is filed, VA seeks to obtain a complete copy of the veteran's service medical records from the service department. Accordingly, with respect to service medical records, a completed application form that sufficiently identifies the veteran's branch and dates of service will ordinarily be sufficient to enable VA to obtain the veteran's service medical records. If a newly discovered service department record is one that VA should have received at the time it obtained the veteran's service medical records, we believe it ordinarily would be within the scope of proposed § 3.156(c)(1). However, some types of service records would not commonly be associated with a veteran's service medical records even though they may reflect or otherwise relate to treatment or hospitalization during service. With respect to such records, we believe a determination must be made on a case-by-case basis as to whether the claimant provided VA with sufficient information to identify and obtain the record at the time of the prior claim. Therefore, we make no change based on this comment.

A commenter discussed that when a claimant is denied benefits for a disability, and then files a new claim based on a post-service change in diagnosis, and that claim is granted, the effective date should be the date of the original claim. This comment is outside the scope of the proposed regulation. The proposed regulation addresses new service medical records, while the comment addresses a new diagnosis in post-service records. Therefore, we make no change based on this comment.

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted with the changes noted.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for

this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this final rule and has concluded that it is a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: May 26, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.156 is amended by:
■ a. Adding a paragraph heading to paragraph (a).
■ b. Adding a paragraph heading to paragraph (b).
■ c. Revising paragraph (c).

The additions and revision read as follows:

§ 3.156 New and material evidence.

(a) *General.* * * *

(b) *Pending claim.* * * *

(c) *Service department records.* (1) Notwithstanding any other section in this part, at any time after VA issues a decision on a claim, if VA receives or associates with the claims file relevant official service department records that existed and had not been associated with the claims file when VA first decided the claim, VA will reconsider the claim, notwithstanding paragraph (a) of this section. Such records include, but are not limited to:

(i) Service records that are related to a claimed in-service event, injury, or disease, regardless of whether such records mention the veteran by name, as long as the other requirements of paragraph (c) of this section are met;

(ii) Additional service records forwarded by the Department of Defense or the service department to VA any time after VA's original request for service records; and

(iii) Declassified records that could not have been obtained because the records were classified when VA decided the claim.

(2) Paragraph (c)(1) of this section does not apply to records that VA could not have obtained when it decided the claim because the records did not exist when VA decided the claim, or because the claimant failed to provide sufficient information for VA to identify and obtain the records from the respective service department, the Joint Services Records Research Center, or from any other official source.

(3) An award made based all or in part on the records identified by paragraph (c)(1) of this section is effective on the date entitlement arose or the date VA received the previously decided claim, whichever is later, or such other date as may be authorized by the provisions of this part applicable to the previously decided claim.

(4) A retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly, except as it may be affected by the filing date of the original claim.

(Authority: 38 U.S.C. 501(a))

* * * * *

■ 3. Section 3.400 is amended by:
■ a. Revising the heading of paragraph (q).
■ b. Removing paragraph (q)(1) heading.
■ c. Redesignating paragraph (q)(1)(i) as new paragraph (q)(1).
■ d. Removing paragraph (q)(2).
■ e. Redesignating paragraph (q)(1)(ii) as new paragraph (q)(2).

The revision reads as follows:

§ 3.400 General.

* * * * *

(q) New and material evidence (§ 3.156) other than service department records. * * *

* * * * *

[FR Doc. E6–14746 Filed 9–5–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AL26

Schedule for Rating Disabilities; Guidelines for Application of Evaluation Criteria for Certain Respiratory and Cardiovascular Conditions; Evaluation of Hypertension With Heart Disease

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by adding guidelines for the evaluation of certain respiratory and cardiovascular conditions and by explaining that hypertension will be evaluated separately from hypertensive and other types of heart diseases.

DATES: *Effective Date:* This amendment is effective October 6, 2006.

Applicability Date: The provisions of this final rule shall apply to all applications for benefits received by VA on or after the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Maya Ferrandino, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7211.

SUPPLEMENTARY INFORMATION: On August 22, 2002, VA published in the **Federal Register** (67 FR 54394) a proposal to amend those portions of the Schedule for Rating Disabilities that address cardiovascular and respiratory conditions by providing guidelines for the evaluation of these conditions and by explaining that hypertension will be evaluated separately from hypertensive and other types of heart diseases. Interested persons were invited to submit written comments on or before October 21, 2002. We received a combined comment from the American College of Chest Physicians, the American Thoracic Society, and the National Association for Medical Direction of Respiratory Care.

VA currently uses the ratio of FEV–1 (Forced Expiratory Volume in one second) to FVC (Forced Vital Capacity), or FEV–1/FVC ratio, to evaluate certain respiratory conditions. Proposed 38 CFR 4.96(d)(7) would direct raters to consider a decreased FEV–1/FVC ratio to be normal if the FEV–1 is greater than 100 percent. The rationale was that in that case the FVC would also be high (better than normal), so a decreased ratio would not indicate pathology. The commenter suggested that we not use the ratio but, rather, use 100 percent of predicted value. Because a decreased ratio could indicate pathology, but not disability, the commenter suggested we delete the statement in the preamble to the proposed rule that a decreased ratio is not indicative of pathology. Because the statement noted by the commenter was not part of the proposed regulatory language, but was made in the preamble to the proposed rule, it would have had no regulatory effect. Nevertheless, we agree with the rationale of this suggestion. Therefore, we will address the commenter's suggestion by changing the regulatory language in § 4.96(d)(7) to the following: "If the FEV–1 and the FVC are both greater than 100 percent, do not assign a compensable evaluation based on a decreased FEV–1/FVC ratio."

Chronic bronchitis (diagnostic code 6600), pulmonary emphysema (diagnostic code 6603), chronic obstructive pulmonary disease (diagnostic code 6604), interstitial lung disease (diagnostic codes 6825–6833), and restrictive lung disease (diagnostic codes 6840–6845) are evaluated primarily on the basis of pulmonary function tests (PFT's). However, these conditions may also be evaluated based on alternative evaluation criteria, which may include measures of the maximum exercise capacity; the presence of pulmonary hypertension (documented by echocardiogram or cardiac catheterization), cor pulmonale, or right ventricular hypertrophy; episode(s) of respiratory failure; and a requirement for outpatient oxygen therapy. For example, a 100-percent evaluation for these conditions may be based on a maximum exercise capacity test result of less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), and a 60-percent evaluation may be based on a maximum exercise capacity test result of 15 to 20 ml/kg/min oxygen consumption (with cardiac or respiratory limitation). We proposed that PFT's be required to evaluate this group of respiratory conditions except, among other exceptions, when the results of a maximum exercise capacity test are of record and are 20 ml/kg/min or less. We also proposed that if a maximum exercise capacity test is not of record, the veteran's disability evaluation would be based on alternative criteria. The commenter stated that since most of the patients with these respiratory conditions have a low exercise tolerance, using the results of only effort-dependent tests would make it easy for some marginal patients to qualify for compensation for their respiratory condition. The commenter stated that exercise tests should be considered maximal and should be performed after PFT results do not fully explain symptomatology.

The vast majority of veterans with respiratory diseases are evaluated on the basis of PFT results. Since the disability due to respiratory disease in veterans ranges from minimal to very severe, and veterans of all ages and all degrees of physical conditioning undergo examinations for respiratory disability, it would be speculative to say that most have a low exercise tolerance. The regulations do not require that a maximum exercise capacity test be conducted in any case, and it is not routinely conducted. If there is already a maximum exercise capacity test of record, and the results are 20 ml/kg/min or less, evaluation (at a 60- or 100-percent level, depending on the exact results) may be based on these results. If no maximum exercise capacity test is of record, as would be true in most cases, this regulation directs that evaluation be based on the alternative criteria. In any given case, the examiner may request, based on clinical judgment, that a maximum exercise capacity test be conducted, such as in cases where the PFT's do not fully explain symptomatology. However, the maximum exercise capacity test is not available in some medical facilities, and evaluation will properly be based in some cases on the clinician's assessment of severity based on history, physical findings, and available laboratory tests. We therefore make no change based on this comment.

The commenter stated that the diagnostic codes in the VA rating schedule for the listed conditions in the proposed rule were confusing and suggested that VA use the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) diagnostic coding system that is used throughout the United States in the health care delivery system. For several reasons, we believe that using ICD–9–CM codes is not a reasonable option.

First, ICD–9–CM and the VA rating schedule serve very different purposes. The ICD–9–CM is used by medical professionals in diagnosing medical conditions. The rating schedule is used by VA personnel in assigning evaluations to conditions that have been diagnosed by medical professionals for VA compensation purposes. The rating schedule is not simply a listing of conditions and symptoms. It includes evaluation criteria for each of the more than 700 disabilities listed. VA also rates disabilities not listed in the rating schedule to the most analogous disability that is listed there. Also, despite its length, the ICD–9–CM does not include certain conditions that VA must commonly evaluate, such as specific muscle injuries. For example, the criteria under diagnostic code 5301 in the rating schedule govern the evaluation of injuries to muscle group I (trapezius, levator scapulae, and serratus magnus). There are 23 muscle groups listed in the VA rating schedule that govern the evaluation of injuries to those muscle groups, and each of the 23

muscle groups has its own set of evaluation criteria based on the severity of the injuries affecting specific muscle functions. Six of them refer to various muscle injuries of the shoulder and upper arm. In contrast, ICD–9–CM code 959.2 covers injuries to the axilla and scapular region of the "Shoulder and upper arm," which is as specific as ICD–9–CM gets for these injuries. Over 350,000 veterans are currently evaluated under VA's muscle injury criteria, which are commonly used for evaluating residuals of combat injuries, such as gunshot and shell fragment wounds. Such VA diagnostic codes are therefore of great importance to VA in evaluating veterans with combat wounds, and also provide useful information for statistical purposes.

Other problems would arise from replacing VA's diagnostic codes with the ICD–9–CM codes. ICD–9–CM's high level of specificity for some conditions would make use by raters difficult, since in some cases a specific code would apply, while in others only the general code would be required for rating purposes. Another issue is that VA has special codes for certain combined disabilities—loss or loss of use of an arm and loss or loss of use of a leg, for example—which have special significance for VA rating purposes, but which have no equivalent in ICD–9–CM. For these reasons, VA does not believe that using ICD–9–CM codes to indicate veterans' disabilities for purposes of compensation would be feasible or useful. We therefore make no change based on this comment.

VA appreciates the comment submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted with the changes noted.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.104, Pension for Non-Service-Connected Disability for Veterans, and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Approved: May 26, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

■ 2. Section 4.96 is amended by adding paragraph (d) to read as follows:

§ 4.96 Special provisions regarding evaluation of respiratory conditions.

* * * * *

(d) *Special provisions for the application of evaluation criteria for diagnostic codes 6600, 6603, 6604, 6825–6833, and 6840–6845.*

(1) Pulmonary function tests (PFT's) are required to evaluate these conditions except:

(i) When the results of a maximum exercise capacity test are of record and are 20 ml/kg/min or less. If a maximum exercise capacity test is not of record, evaluate based on alternative criteria.

(ii) When pulmonary hypertension (documented by an echocardiogram or cardiac catheterization), cor pulmonale, or right ventricular hypertrophy has been diagnosed.

(iii) When there have been one or more episodes of acute respiratory failure.

(iv) When outpatient oxygen therapy is required.

(2) If the DLCO (SB) (Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method) test is not of record, evaluate based on alternative criteria as long as the examiner states why the test would not be useful or valid in a particular case.

(3) When the PFT's are not consistent with clinical findings, evaluate based on the PFT's unless the examiner states why they are not a valid indication of respiratory functional impairment in a particular case.

(4) Post-bronchodilator studies are required when PFT's are done for disability evaluation purposes except when the results of pre-bronchodilator pulmonary function tests are normal or when the examiner determines that post-bronchodilator studies should not be done and states why.

(5) When evaluating based on PFT's, use post-bronchodilator results in applying the evaluation criteria in the rating schedule unless the post-bronchodilator results were poorer than the pre-bronchodilator results. In those cases, use the pre-bronchodilator values for rating purposes.

(6) When there is a disparity between the results of different PFT's (FEV–1 (Forced Expiratory Volume in one second), FVC (Forced Vital Capacity), etc.), so that the level of evaluation would differ depending on which test result is used, use the test result that the examiner states most accurately reflects the level of disability.

(7) If the FEV–1 and the FVC are both greater than 100 percent, do not assign

a compensable evaluation based on a decreased FEV–1/FVC ratio.

* * * * *

■ 3. Section 4.100 is added to read as follows:

§ 4.100 Application of the evaluation criteria for diagnostic codes 7000–7007, 7011, and 7015–7020.

(a) Whether or not cardiac hypertrophy or dilatation (documented by electrocardiogram, echocardiogram, or X-ray) is present and whether or not there is a need for continuous medication must be ascertained in all cases.

(b) Even if the requirement for a 10% (based on the need for continuous medication) or 30% (based on the presence of cardiac hypertrophy or dilatation) evaluation is met, METs testing is required in all cases except:

(1) When there is a medical contraindication.

(2) When the left ventricular ejection fraction has been measured and is 50% or less.

(3) When chronic congestive heart failure is present or there has been more than one episode of congestive heart failure within the past year.

(4) When a 100% evaluation can be assigned on another basis.

(c) If left ventricular ejection fraction (LVEF) testing is not of record, evaluate based on the alternative criteria unless the examiner states that the LVEF test is needed in a particular case because the available medical information does not sufficiently reflect the severity of the veteran's cardiovascular disability.

■ 4. Section 4.104, diagnostic code 7101 is amended by adding a Note (3) to read as follows:

§ 4.104 Schedule of ratings—cardiovascular system.

* * * * *

7101 * * *

Note (3): Evaluate hypertension separately from hypertensive heart disease and other types of heart disease.

* * * * *

[FR Doc. E6–14732 Filed 9–5–06; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0337–200613(f); FRL–8216–7]

Approval and Promulgation of Implementation Plans for Kentucky: Air Permit Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is now taking final action to approve two of four requested revisions to the State Implementation Plan (SIP) for the Commonwealth of Kentucky submitted to EPA on March 15, 2001. The two revisions being approved today regard two main changes to Kentucky's rules. The first change involves the removal and separation of rule 401 Kentucky Administrative Regulations (KAR) 50:035 ("Permits") into three separate rules under a new Chapter 52 (Permits, Registrations, and Prohibitory Rules). Specifically, these rules are 52:001 (Definitions for 401 KAR Chapter 52), 52:030 (Federally-enforceable permits for non-major sources), and 52:100 ("Public, affected state, and U.S. EPA review"). The second change involves corrections to grammatical errors in rule 50:032 ("Prohibitory Rule for Hot Mix Asphalt Plants") and the removal of rule 50:032 from Chapter 50 and adding it to Chapter 52, under 52:090 ("Prohibitory Rule for Hot Mix Asphalt Plants"). This final action also responds to adverse comments submitted in response to EPA's proposed rule published on December 30, 2002. This final action does not address the removal of 401 KAR 50:030 ("Registration of Sources") or changes made to 401 KAR 52:080 ("Regulatory limit on potential to emit"), that was part of the March 15, 2001, submittal, but which will be addressed in a separate action.

DATES: *Effective Date:* This rule will be effective October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2006–0337. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Hou, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8965. Mr. Hou can also be reached via electronic mail at *Hou.James@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Today's Action

EPA is now taking final action to approve two of four requested revisions to the (SIP) for the Commonwealth of Kentucky submitted to EPA on March 15, 2001, and clarified in a letter dated July 18, 2001. The SIP submittal and the letter-clarification were submitted by the Kentucky Department for Environmental Protection, Division of Air Quality. The two revisions being approved today regard two main changes to Kentucky's rules. The first change involves the removal and separation of rule 401 Kentucky Administrative Regulations (KAR) 50:035 ("Permits") into three separate rules under a new Chapter 52 (Permits, Registrations, and Prohibitory Rules). Specifically, these rules are 52:001 (Definitions for 401 KAR Chapter 52), 52:030 ("Federally-enforceable permits for non-major sources"), and 52:100 ("Public, affected state, and U.S. EPA review"). The second change involves corrections to grammatical errors in rule 50:032 ("Prohibitory Rule for Hot Mix Asphalt Plants") and the removal of rule 50:032 from Chapter 50 and adding it to Chapter 52, under 52:090 ("Prohibitory Rule for Hot Mix Asphalt Plants"). Today's final action also responds to one set of adverse comments submitted in response to EPA's proposed rule published on December 30, 2002 (67 FR 79543). Today's final action does not address the removal of 401 KAR 50:030

("Registration of Sources") or changes made to 401 KAR 52:080 ("Regulatory limit on potential to emit"), which will be addressed in a separate action. Therefore, today's final action approves a total of four rules into the Kentucky SIP; 401 KAR 52:001, 401 KAR 52:030, 401 KAR 52:090, and 401 KAR 52:100 and the removal of rules 401 KAR 50:032 and 401 KAR 50:035. This final action is consistent with section 110 of the Clean Air Act.

II. Background

On December 30, 2002, EPA simultaneously published a proposed rule (67 FR 79543, December 30, 2002) and a direct final rule (67 FR 79523, December 30, 2002) to approve the above described revisions to the Kentucky SIP, submitted by Kentucky on March 15, 2001. Because EPA received one set of adverse comments during the public comment period, EPA withdrew the direct final rule on February 10, 2003 (68 FR 6629). Today, EPA is taking final action on the Kentucky SIP revisions proposed for approval on December 30, 2002, as well as responding to the set of adverse comments received on that proposed action, with the exception of the portions of the March 15, 2001, submittal noted above.

III. Response to Comments

EPA received comments from one commenter who opposed the proposed revision to the Kentucky SIP published on December 30, 2002 (67 FR 79543). A summary of the adverse comments received on the proposed rule and EPA's response to the comments, is presented below.

Comment: The commenter requests that EPA: (1) Reject approval of 401 KAR 52:001 and 401 KAR 52:100 and reject incorporation of these provisions into 40 Code of Federal Regulations (CFR) Part 52, Subpart S; (2) provide an additional comment period if EPA proposes to approve any non-emergency amendment of 40 CFR part 52, subpart S; (3) command that all prevention of significant deterioration (PSD) portions of 40 CFR part 124 apply to PSD permitting actions by Kentucky; and (4) cancel all authority that EPA gave to Kentucky to issue PSD permits.

Response: The following response will address each of the issues raised in the above comment in turn. First, the provisions contained in 401 KAR 52:001 ("Definitions for 401 KAR Chapter 52") and 401 KAR 52:100 ("Public, affected state, and U.S. EPA review") are required to be a part of the Kentucky SIP. Both the definitions and the public review provisions are consistent with federal requirements for the programs to which they apply. Therefore, the proposed rules are approvable into the Kentucky SIP. As a point of clarification, 401 KAR 52:001 and 52:100 relate specifically to Kentucky's Clean Air Act (CAA) title V permit program and Kentucky's Federally Enforceable State Operating Permit (FESOP) program. Kentucky's PSD permit rules, found in 401 KAR Chapter 51, refer to the public review provisions of 401 KAR 52:100, but only to the extent that such provisions are more stringent than the public review provisions found in the federal rule, 40 CFR 51.166(q).

Second, the Kentucky SIP, like many other SIPs, is regularly amended. Most recently, EPA proposed revisions to the Kentucky SIP on February 10, 2006 (71 FR 6988). This revision dealt specifically with Kentucky's PSD regulations. No public comments were received. The commenter failed to state any reason why the comment period for the present proposal (67 FR 79543) should be reopened.

Third, the commenter's request to expand the applicability of 40 CFR part 124 is not relevant to the present action which does not propose any changes to 40 CFR part 124. 40 CFR part 124 governs EPA procedures for certain permit actions (e.g., issuance, termination), but it does not apply to PSD permits issued by approved state agencies (40 CFR 124.1(e)). Rather, the public review procedures of PSD permits issued by an approved state are governed by 40 CFR 51.166(q). Kentucky's PSD regulations (401 KAR 51:017) require that Kentucky follow the public review procedures in 40 CFR 51.166(q), and any more stringent requirements existing in 401 KAR 52:100.

Fourth, the present action does not relate to Kentucky's authority to issue PSD permits, and therefore, EPA cannot "cancel" Kentucky's authority to issue PSD permits at this time.

Comment: EPA must act to provide a "swift and certain remedy," (1) where KAR is different from 40 CFR 52.21(b) through (w); or (2) where KAR provides less effective technical environmental protection, less effective opportunity for public participation in the permitting process, or less effective legal forums and processes for review of questioned decisions.

Response: The proposed SIP revision at issue (67 FR 79543) relates only to specific portions of the KAR and it does not relate to Kentucky's PSD regulations. Therefore, the comment is not relevant to the proposed action. Nonetheless, as a point of clarification, 40 CFR 52.21 contains the Federal PSD program (i.e., if EPA were administering the PSD program). States may meet the requirements of the federal regulations with different but equivalent rules. As noted earlier, Kentucky recently revised its PSD program. That revision was noticed in the **Federal Register** and no public comments were received. It is not clear from the comment what "swift and certain remedy" the commenter requests EPA to take, but the comment is not relevant to the proposed action at issue at this time.

Comment: 401 KAR 52:100 is patently and callously contemptuous of the intent of the Federal Clean Air Act.

Response: The commenter fails to provide information demonstrating how 401 KAR 52:100 is "contemptuous" of the Clean Air Act (CAA). 401 KAR 52:100 is consistent with federal regulations promulgated pursuant to EPA's authority under the Clean Air Act.

Comment: There appears to be no parallel in the CAA or the CFR to 401 KAR 52:100, Section 2(3)(c), which grants the applicant ten (10) days of exclusive lawful speech. The commenter believes that this provision is not consistent with the CAA and 40 CFR 124.13. The commenter also believes that if the applicant cannot comment within the same timeframe as the public, then the PSD permit should not be issued to the applicant.

Response: As noted earlier, the provisions included in 40 CFR part 124 do not apply to the issuance of PSD permits by approved states. With regard to the comment about 401 KAR 52:100, Section 2(3)(c), a state may satisfy the Federal regulations with different but equivalent regulations, and a state may include additional procedures not included in the Federal regulations so long as the rule is not less stringent. This provision is not less stringent and does not impact the public's ability to comment on the proposed action. 401 KAR 52:100 is equivalent to the Federal regulations for the programs to which it applies and it is approvable into the Kentucky SIP.

As a point of clarification, this additional comment period is not an opportunity for the applicant to comment on the proposed permit, but rather, an opportunity for the applicant to respond to public comments received during the public comment period. This response to comments by the applicant is discretionary (i.e., the applicant may or may not actually provide such comments). Further, the response by the applicant is useful for both the reviewing agency and the public because it establishes a forum in which

the applicant is responding to the public's concerns. The response to comments document is made part of the public record. Many state permitting programs include this provision to allow for a forum in which the applicant can respond to public comments and assist in public understanding of the issues in the application.

Comment: There appears to be no effective provision in 401 KAR 52:100 for extension of comment time. The commenter references 40 CFR 124.13, which allows for a comment period longer than 30 days to give reasonable opportunity to reply if such a need for time is demonstrated.

Response: As a general matter, the provisions of 40 CFR part 124 apply only to EPA and not to approved states. For state approved programs, such as CAA title V or PSD permit programs, the applicable public participation regulations are found in the federal regulations applicable to that specific state approved program. For example, for title V purposes, state programs must comply with the public participation provisions described in 40 CFR part 70; for PSD purposes, state programs must comply with the public participation provisions described in 40 CFR 51.166(q). 401 KAR 52:100 is consistent with the federal regulations for the programs to which it applies.

Comment: The commenter expresses that Section 3 of 401 KAR 52:100 is written as if a public hearing is optional. The commenter refers to the CAA and suggests that a hearing is obligated for many PSD matters.

Response: Kentucky's PSD regulations (401 KAR 51:017) require that the permitting authority follow the applicable procedures of 40 CFR 51.166(q) and 401 KAR 52:100.

Comment: The commenter states that citizens, in an area where a new major source is to be located or where an existing source is requesting a major modification, should be entitled and informed of the public participation process including five elements. These elements obligate a hearing if there is a request; affords time, such as at least 30 calendar days prior to the hearing during which citizens may familiarize themselves with the draft, the technical support of the draft, and the application; grant to anyone who makes some cogent timely comment, the legal standing right to appeal any issue raised by anyone's cogent timely comment; obligate that if a cogent technical comment is made orally at the hearing, that it has the full force of law and that it need not be submitted by the speaker in writing in order to be an item preserved for review (although encouraging written submissions for accuracy and courtesy to the permitting agency is proper), and; afford time, such as at least 12 calendar days following the hearing, during which citizens may timely file written comment on the draft after having had the opportunity to have heard the matters expressed in the hearing. The commenter further requests that EPA initiate rulemaking for various regulatory permit programs to "codify" certain public participation elements.

Response: With regard to the actions at issue at this time, Kentucky's provisions are equivalent to applicable federal regulations. Therefore, Kentucky's rules proposed for inclusion into the SIP are approvable by EPA.

Comment: The commenter expresses that Section 5 of 401 KAR 52:100 does not contain "identical, synonymous, or superior text as a notice requirement." The commenter points to a January 2002 legal notice published by the Kentucky Division for Air Quality (KDAQ) as an example of a deficient public notice.

Response: In accordance with Kentucky's rules, public notice and participation on PSD permits is governed by 40 CFR 51.166(q). It is unclear whether the commenter believes that the KDAQ January 2002 legal notice fails to comply with the provisions in the Kentucky rules which apply to such notices. Nonetheless, the SIP action proposed by EPA on December 30, 2002, does not relate to the January 2002 public notice on a PSD permit discussed by the commenter. Comments regarding specific PSD permits and corresponding public notices should be raised during the public comment period on that permit and addressed to the agency responsible for issuing that permit. This comment is not relevant to the action at issue at this time.

Comment: The commenter asserts that the requirements of 40 CFR 51.166 are "terse to the point of near meaninglessness" and do not comply with Congressional intent for public participation. The commenter makes a similar statement regarding portions of 40 CFR part 124. The commenter gives specific examples of what a public notice could include.

Response: Neither of the provisions cited by the commenter are at issue in this final action regarding Kentucky's SIP. Both provisions are final federal rules that have been in effect for years. Comments regarding federal rules should have been provided within the timeframes for challenging such rules (i.e., when EPA proposes changes to federal rules, comments must be submitted within the stated timeframes in order to be considered by EPA for that rulemaking). The present action will have no impact on 40 CFR 51.166 or 40 CFR part 124.

Comment: The commenter notes that Section 2(4) of 401 KAR 52:100 will make public comments available upon request and believes the comments may be abridged, which does not meet the requirements set forth in 40 CFR 51.166.

Response: The commenter appears confused about the application of 401 KAR 52:100 to different air permit programs. As noted earlier, Kentucky's PSD permitting regulations require that the permitting authority follow the provisions described in 40 CFR 51.166 for public participation. 401 KAR 52:100 applies specifically to CAA title V operating permits (401 KAR 52:020) and Federally Enforceable State Operating Permits (FESOPs) (401 KAR 52:030). The language included in 401 KAR 52:100 is equivalent to federal regulations regarding public participation for the programs to which it applies. Therefore, the regulations proposed by Kentucky for inclusion in the Kentucky SIP are approvable.

Comment: The commenter states that much of 401 KAR 52:001 does not meet requirements established in 40 CFR 51.166(a). The commenter identifies several examples where the commenter believes that definitions in 401 KAR 52:001 are less stringent than the federal definitions, or otherwise problematic. As examples, the commenter cites to the definition of "electric utility steam generating unit," "commence," and "major modification."

Response: Kentucky's PSD permitting definitions are found in 401 KAR 51:001, not 52:001. Kentucky's rules, including 401 KAR 52:001, are equivalent to the applicable federal regulations, and are approvable into the Kentucky SIP. Notably, the definitions included in Kentucky's PSD permit program (401 KAR Chapter 51) were recently revised by Kentucky to include new regulations promulgated by EPA in December, 2002. EPA published a notice regarding Kentucky's PSD program in the **Federal Register** on February 10, 2006 (71 FR 9688); no public comments were received on that proposed action. EPA took final action to approve those changes on July 11, 2006 (71 FR 38990).

Comment: With regard to a statement in 67 FR 79524 (the direct final rule that was withdrawn), the commenter states that "[t]he people are reasonably entitled to review EPA's work again prior to EPA granting any additional misplaced authority to a rogue state."

Response: The procedure followed by EPA in the present action included the simultaneous publication of both a direct final rule (67 FR 79524, December 30, 2002) and a proposed rule (67 FR

79543, December 30, 2002). As noted in the direct final action, when EPA receives adverse comments on direct final rules, EPA withdraws the direct final rule and issues a final rule based on the simultaneously published proposed rule. EPA withdrew the direct final rule on February 10, 2003 (68 FR 6629). EPA's review of the proposed SIP revision by Kentucky was comprehensive. EPA is now taking final action based on the proposal, and addressing the one set of adverse comments received on the proposed action.

Comment: The commenter states that 67 FR 79523 and 79543 are devoid of explanation for the proposed addition of 401 KAR 52:001 and 401 KAR 52:100. The commenter further notes that 40 CFR part 52, subpart S is defective.

Response: EPA disagrees with the commenter's statement. The two **Federal Register** notices cited by the commenter include specific information regarding what actions are being taken by EPA. The Kentucky SIP contains rules that are equivalent to the applicable Federal rules. The commenter fails to provide any reason why 40 CFR part 52, subpart S is defective.

Comment: The commenter states that Kentucky should be sanctioned for having acted in contempt of the CAA.

Response: The commenter has not provided any information demonstrating how Kentucky has acted in "contempt" of the CAA. This comment does not appear relevant to the action proposed by EPA regarding the Kentucky SIP. EPA disagrees with the commenter's conclusion regarding sanctions.

Comment: The commenter states that there can be no doubt that Kentucky knowingly and intentionally submitted to EPA rules that provide less effective technical environmental protection; less effective opportunity for informed public participation in the permitting process; and less effective legal forums and processes for review of questioned decisions than that given to those where 40 CFR 52.21 and 40 CFR part 124 are fully applicable to PSD permits.

Response: EPA has no information or evidence suggesting that Kentucky has knowingly and intentionally violated any provision of the CAA or its implementing regulations. As noted earlier, 40 CFR part 124 does not apply to PSD permits issued by state permitting authorities and likewise, the provisions in 40 CFR 52.21 govern only EPA issuance of PSD permits.

Comment: The commenter appears to state concern regarding the time that EPA took to review the Kentucky SIP revision at issue.

Response: In reviewing the Kentucky SIP revision at issue, EPA followed its SIP processing guidance, its regulations at 40 CFR part 51, Appendix V, and the requirements of Section 110 of the Clean Air Act.

IV. Final Action

EPA is now taking final action to approve two of four requested revisions to the SIP for the Commonwealth of Kentucky submitted to EPA on March 15, 2001. The first revision being approved regards the removal and separation of rule 401 Kentucky Administrative Regulations (KAR) 50:035 ("Permits") into three separate rules under a new Chapter 52 (Permits, Registrations, and Prohibitory Rules). Specifically, these rules are 52:001 (Definitions for 401 KAR Chapter 52), 52:030 (Federally-enforceable permits for non-major sources), and 52:100 ("Public, affected state, and U.S. EPA review"). The second change involves corrections to grammatical errors in rule 50:032 ("Prohibitory Rule for Hot Mix Asphalt Plants") and the removal of rule 50:032 from Chapter 50 and adding it to Chapter 52, under 52:090 ("Prohibitory Rule for Hot Mix Asphalt Plants").

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. 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 SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the Commonwealth to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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 November 6, 2006. 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 Clean Air Act section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 25, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920(c) Table 1 is amended:

■ a. In paragraph (c) by removing entries for 401 KAR 50:035 titled "Permits" and 401 KAR 50:032 titled "Prohibitory rule for hot mix asphalt plants",

■ b. In paragraph (c) adding in numerical order a new chapter heading "Chapter 52 Permits, Registrations, and Prohibitory Rules" and entries for 401 KAR 52:001 titled "Definitions for 401 KAR Chapter 52", 401 KAR 52:030 titled "Federally enforceable permits for non-major sources", 401 KAR 52:090 titled "Prohibitory rule for hot mix asphalt plants" and 401 KAR 52:100 titled "Public, affected state, and U.S. EPA review" to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1.—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	* * *	*	*	*
Chapter 52 Permits, Registrations, and Prohibitory Rules				
401 KAR 52:001	Definitions for 401 KAR Chapter 52	01/15/01	09/06/06 [Insert citation of publication].	
401 KAR 52:030	Federally enforceable permits for non-major sources	01/15/01	09/06/06 [Insert citation of publication].	
401 KAR 52:090	Prohibitory rule for hot mix asphalt plants	01/15/01	09/06/06 [Insert citation of publication].	
401 KAR 52:100	Public, affected state, and U.S. EPA review	01/15/01	09/06/06 [Insert citation of publication].	
*	* * *	*	*	*

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[FR Doc. 06–7415 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0436; FRL–8214–2]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Ford Motor Company Adjusted Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a January 4, 2006, request from Illinois for a site specific revision to the State Implementation Plan (SIP) for the Ford Motor Company (Ford). The revision will allow Ford to discontinue use of its Stage II vapor recovery system (Stage II) at its Chicago Assembly Plant. In place of Stage II, Ford will comply with the standards of the federal onboard refueling vapor recovery (ORVR) regulations, as well as meet other minor conditions. The exclusive use of ORVR will provide at least an equivalent amount of gasoline vapor capture as Stage II.

DATES: This direct final rule will be effective November 6, 2006, unless EPA receives adverse comments by October 6, 2006. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0436, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0436. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Julie Henning, Environmental Protection Specialist, at (312) 886–4882 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Julie Henning, Environmental Protection Specialist, State and Tribal Planning Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4882, *henning.julie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

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

A. Submitting CBI

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

B. Tips for Preparing Your Comments

When submitting comments, remember to:

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

II. Why Did Ford Request an Adjusted Standard From the State?

Pursuant to requirements at 35 Illinois Administrative Code 218.586, Ford has been using and maintaining a vapor collection and control system (Stage II) at the Chicago Assembly Plant, which is certified as having a vapor recovery and removal efficiency of at least 95%. In addition, Section 202(a)(6) of the Clean Air Act (CAA) requires that automobile manufacturers such as Ford incorporate onboard refueling vapor recovery (ORVR) systems in new cars that recover at least 95% of the gasoline vapors displaced during the refueling of vehicles, with the intent that ORVR would fully replace the Stage II system once the ORVR systems were in widespread use throughout the motor vehicle fleet. Only ORVR-equipped vehicles can be fueled at this facility, therefore, the Stage II system at the Chicago Assembly Plant can be discontinued because it is a redundant control system.

III. What Are the Environmental Effects of This Action?

The overall amount of gasoline vapor emissions emitted to the atmosphere will not change as a result of this action, and the action will therefore have no environmental effect. The Stage II system has a 95% vapor recovery. Every vehicle fueled with the Stage II system, however, is already equipped with ORVR, which also captures at least 95% of evaporative gasoline emissions. ORVR therefore fully displaces the need for Stage II vapor recovery at the Chicago Assembly Plant.

IV. What Action Is EPA Taking Today?

EPA is approving changes to the Illinois SIP to grant an adjusted standard that will allow Ford to discontinue use of its Stage II vapor recovery system at its Chicago Assembly Plant.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective November 6, 2006 without further notice unless we receive relevant adverse written comments by October 6, 2006. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so

at this time. If we do not receive any comments, this action will be effective November 6, 2006.

V. Statutory and Executive Order Reviews.

Executive Order 12866; Regulatory Planning and Review

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

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2006. 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 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 17, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart O—Illinois

■ 2. Section 52.720 is amended by adding and reserving paragraph (c)(174) and adding paragraph (c)(175) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(174) [Reserved]

(175) On January 4, 2006, Illinois submitted a site-specific State Implementation Plan revision for the Ford Motor Company (Ford) Chicago Assembly Plant. The revision allows Ford to discontinue use of its Stage II vapor recovery system and requires instead that Ford comply with federal onboard refueling vapor recovery regulations and other conditions.

(i) Incorporation by reference.

(A) September 1, 2005, Opinion and Order of the Illinois Pollution Control

Board, AS 05–5, effective September 1, 2005.

[FR Doc. E6–14543 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI–87–1; FRL–8214–1]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is revising the format of materials submitted by the state of Michigan that are incorporated by reference (IBR) into its State Implementation Plan (SIP). The regulations affected by this format change have all been previously submitted by Michigan and approved by EPA.

This format revision will primarily affect the "Identification of plan" section, as well as the format of the SIP materials that will be available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the EPA Region 5 Office. EPA is also adding a table in the "Identification of plan" section which summarizes the approval actions that EPA has taken on the non-regulatory and quasi-regulatory portions of the Michigan SIP. The sections pertaining to provisions promulgated by EPA or state-submitted materials not subject to IBR review remain unchanged.

DATES: *Effective Date:* This final rule is effective on September 6, 2006.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

Table of Contents

I. Background

A. Description of a SIP

Each state has a SIP containing the control measures and strategies used to attain and maintain the National Ambient Air Quality Standards (NAAQS). The SIP is extensive, containing elements covering a variety of subjects, such as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

B. How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment rulemaking, they are incorporated into the federally approved SIP and are identified in Title 40 of the Code of Federal Regulations part 52 (Approval and Promulgation of Implementation Plans), (40 CFR part 52). The actual state regulations approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

C. How the State and EPA Update the SIP

The SIP is a living document which can be revised as necessary to address the unique air pollution problems in the state. Therefore, EPA must, from time to time, take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR).

EPA began the process of developing: (1) A revised SIP document for each state that would be incorporated by reference under the provisions of title 1 CFR part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

D. How EPA Compiles the SIP

The federally approved regulations, source-specific requirements, and nonregulatory provisions (entirely or portions of) submitted by each state agency have been organized by EPA into a "SIP compilation." The SIP compilation contains the updated regulations, source-specific requirements, and nonregulatory provisions approved by EPA through previous rulemaking actions in the **Federal Register**. The compilation is contained in three-ring binders and will be updated, primarily on an annual basis. The nonregulatory provisions are available by contacting Kathleen D'Agostino at the Regional Office.

E. How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the regulations, part two contains the source-specific requirements that have been approved as part of the SIP, and part three contains nonregulatory provisions that have been approved by EPA. Each part consists of a table of identifying information for each SIP-approved regulation, each SIP-approved source-specific requirement, and each nonregulatory SIP provision. In this action, EPA is publishing the tables summarizing the applicable SIP requirements for Michigan. The effective dates in the tables indicate the date of the most recent revision of each regulation. The EPA Regional Offices have the primary responsibility for updating the compilation and ensuring its accuracy.

F. Where You Can Find a Copy of the SIP Compilation

EPA's Region 5 Office developed and will maintain the compilation for Michigan. A copy of the full text of Michigan's regulatory and source-specific compilation will also be maintained at NARA and EPA's Air Docket and Information Center.

G. The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the "Identification of plan" section and included additional information to clarify the enforceable elements of the SIP.

The revised Identification of plan section contains five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source specific permits, and (e) EPA approved nonregulatory and quasi-regulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

H. When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of plan section found in each subpart of 40 CFR part 52.

I. The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of plan section, previously appearing in the CFR as the first or second section of part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether or not to retain the Identification of plan appendices for some further period.

II. What EPA Is Doing in This Action

Today's rule constitutes a "housekeeping" exercise to ensure that all revisions to the state programs that have occurred are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

EPA has determined that today's rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does 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), nor will it 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 rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This rule does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the

Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's action simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of September 6, 2006. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Michigan SIP compilation had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for these "Identification of plan" reorganization actions for Michigan.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 17, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart X—Michigan

§52.1170 [Redesignated as §52.1190]

■ 2. Section 52.1170 is redesignated as § 52.1190 and the section heading and paragraph (a) are revised to read as follows:

§52.1190 Original Identification of plan section.

(a) This section identifies the original "Air Implementation Plan for the State of Michigan" and all revisions submitted by Michigan that were federally approved prior to August 1, 2006.

* * * * *

■ 3. A new § 52.1170 is added to read as follows:

§52.1170 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for Michigan under section 110 of the Clean Air Act, 42 U.S.C. 7401, and 40 CFR part 51 to meet National Ambient Air Quality Standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c), (d), and (e) of this section with an EPA approval date prior to August 1, 2006, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d), and (e) of this section with the EPA approval dates after August 1, 2006, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 5 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of August 1, 2006.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 5, Air Programs Branch, 77 West Jackson Boulevard, Chicago, IL 60604; the EPA, Air and Radiation Docket and Information Center, EPA Headquarters Library, Infoterra Room (Room Number 3334), EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) EPA approved regulations.

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
Annual Reporting				
R 336.202	Annual reports	11/11/86	3/8/94, 59 FR 10752.	
Part 1. General Provisions				
R 336.1101	Definitions; A	4/27/93	9/7/94, 59 FR 46182.	Only: actual emissions, air-dried coating, air quality standard, allowable emissions, and alternate opacity.
		2/22/85	6/11/92, 57 FR 24752.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1102	Definitions; B	5/27/02	2/24/03, 68 FR 8550.	
R 336.1103	Definitions; C	4/27/93	9/7/94, 59 FR 46182.	Only: coating category, calendar day, class II hardboard paneling finish, coating line, coating of automobiles and light duty trucks, coating of fabric, coating of large appliances, coating of paper, coating of vinyl, component, component in field gas service, component in gaseous volatile organic compound service, component in heavy liquid service, component in light liquid service, component in liquid volatile organic compound service, condenser, conveyorized vapor degreaser, and creditable.
		2/22/85	6/11/92, 57 FR 24752.	
R 336.1104	Definitions; D	5/27/02	2/24/03, 68 FR 8550.	
R 336.1105	Definitions; E	5/27/02	2/24/03, 68 FR 8550.	
R 336.1106	Definitions; F	2/22/85	6/11/92, 57 FR 24752.	
R 336.1107	Definitions; G	5/27/02	2/24/03, 68 FR 8550.	
R 336.1108	Definitions; H	5/27/02	2/24/03, 68 FR 8550.	
R 336.1109	Definitions; I	8/21/81	7/26/82, 47 FR 32116.	
R 336.1112	Definitions; L	1/18/80	5/6/80, 45 FR 29790.	
R 336.1113	Definitions; M	5/27/02	2/24/03, 68 FR 8550.	
R 336.1114	Definitions; N	8/21/81	7/26/82, 47 FR 32116.	
R 336.1115	Definitions; O	8/21/81	7/26/82, 47 FR 32116.	
R 336.1116	Definitions; P	4/27/93	9/7/94, 59 FR 46182.	Only: packaging rotogravure printing, printed interior panel, process unit turnaround, publication rotogravure printing, and pushside Removed: pneumatic rubber tire manufacturing.
		2/22/85	6/11/92, 57 FR 24752.	All except pneumatic rubber tire manufacturing, which was removed 9/7/94.
R 336.1118	Definitions; R	5/27/02	2/24/03, 68 FR 8550.	
R 336.1119	Definitions; S	2/22/85	6/11/92, 57 FR 24752.	
R 336.1120	Definitions; T	5/27/02	2/24/03, 68 FR 8550.	
R 336.1121	Definitions; U	4/20/89	9/15/94, 59 FR 47254.	
R 336.1122	Definitions; V	3/13/03	2/9/04, 69 FR 5932.	
R 336.1123	Definitions; W	8/21/81	7/26/82, 47 FR 32116.	
R 336.1127	Terms defined in the act	1/18/80	5/6/80, 45 FR 29790.	
Part 2. Air Use Approval				
R 336.1201	Permits to install	1/18/80	5/6/80, 45 FR 29790.	
R 336.1202	Waivers of approval	1/18/80	5/6/80, 45 FR 29790.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1203	Information required	1/18/80	5/6/80, 45 FR 29790.	
R 336.1204	Authority of agents	1/18/80	5/6/80, 45 FR 29790.	
R 336.1206	Processing of applications for other facilities.	1/18/80	5/6/80, 45 FR 29790.	
R 336.1207	Denial of permits to install	1/18/80	5/6/80, 45 FR 29790.	
R 336.1208	Permits to operate	1/18/80	5/6/80, 45 FR 29790.	
R 336.1220	Construction of sources of volatile organic compounds in ozone nonattainment areas; conditions for approval.	8/21/81	1/27/82, 47 FR 3764.	
R 336.1221	Construction of sources of particulate matter, sulfur dioxide, or carbon monoxide in or near nonattainment areas; conditions for approval.	7/17/80	1/12/82, 47 FR 1292.	
R 336.1240	Required air quality models	1/18/80	5/6/80, 45 FR 29790.	
R 336.1241	Air quality modeling demonstration requirements.	1/18/80	5/6/80, 45 FR 29790.	
R 336.1280	Permit system exemptions; cooling and ventilation equipment.	1/18/80	5/6/80, 45 FR 29790.	
R 336.1281	Permit system exemptions; cleaning, washing and drying equipment.	1/18/80	5/6/80, 45 FR 29790.	
R 336.1282	Permit system exemptions; cooling and ventilation equipment.	1/18/80	5/6/80, 45 FR 29790.	
R 336.1283	Permit system exemptions; testing and inspection equipment.	7/17/80	8/28/81, 46 FR 43422.	
R 336.1284	Permit system exemptions; containers.	1/18/80	5/6/80, 45 FR 29790.	
R 336.1285	Permit system exemptions; miscellaneous.	1/18/80	5/6/80, 45 FR 29790.	
	Part 3. Emission Limitations and Prohibitions—Particulate Matter			
R 336.1301	Standards for density of emissions	3/19/02	6/1/06, 71 FR 31093.	
R 336.1303	Grading visible emissions	3/19/02	6/1/06, 71 FR 31093.	
R 336.1310	Open burning	2/3/99	6/28/02, 67 FR 43548.	
R 336.1330	Electrostatic precipitation control systems.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1331	Emissions of particulate matter	3/19/02	6/1/06, 71 FR 31093.	All except Table 31, section C.8.
		1/18/80	5/22/81, 46 FR 27923.	Only Table 31 Section C.7, preheater equipment.
R 336.1349	Coke oven compliance date	2/22/85	6/11/92, 57 FR 24752.	
R 336.1350	Emissions from larry-car charging of coke ovens.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1351	Charging hole emissions from coke ovens.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1352	Pushing operation fugitive emissions from coke ovens.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1353	Standpipe assembly emissions during coke cycle from coke ovens.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1354	Standpipe assembly emissions during decarbonization from coke ovens.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1355	Coke oven gas collector main emissions from slot-type coke ovens.	1/18/80	5/55/81, 46 FR 27923.	
R 336.1356	Coke oven door emissions from coke ovens; doors that are 5 meters or shorter.	2/22/85	6/11/92, 57 FR 24752.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1357	Coke oven door emissions from coke oven doors; doors that are taller than 5 meters.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1358	Roof monitor visible emissions at steel manufacturing facilities from electric arc furnaces and blast furnaces.	4/30/98	6/1/06, 71 FR 31093.	
R 336.1359	Visible emissions from scarfer operation stacks at steel manufacturing facilities.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1360	Visible emissions from coke oven push stacks.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1361	Visible emissions from blast furnace casthouse operations at steel manufacturing facilities.	4/30/98	6/1/06, 71 FR 31093.	
R 336.1362	Visible emissions from electric arc furnace operations at steel manufacturing facilities.	4/30/98	6/1/06, 71 FR 31093.	
R 336.1363	Visible emissions from argon-oxygen decarburization operations at steel manufacturing facilities.	4/30/98	6/1/06, 71 FR 31093.	
R 336.1364	Visible emissions from basic oxygen furnace operations.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1365	Visible emissions from hot metal transfer operations at steel manufacturing facilities.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1366	Visible emissions from hot metal desulphurization operations at steel manufacturing facilities.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1367	Visible emissions from sintering operations.	2/22/85	6/11/92, 57 FR 24752.	
R 336.1370	Collected air contaminants	2/17/81	11/15/82, 47 FR 51398.	
R 336.1371	Fugitive dust control programs other than areas listed in Table 36.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1372	Fugitive dust control program; required activities; typical control methods.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1374	Particulate matter contingency measures: Areas listed in Table 37.	3/19/02	6/1/06, 71 FR 31093.	
Part 4. Emission Limitations and Prohibitions—Sulfur-Bearing Compounds				
R 336.1401	Emissions of sulfur dioxide from power plants.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1402	Emission of sulfur dioxide from fuel-burning sources other than power plants.	1/18/80	5/6/80, 45 FR 29790.	
R 336.1403	Oil- and natural gas-producing or transporting facilities and natural gas-processing facilities; emissions; operation.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1404	Emissions of sulfuric acid mist from sulfuric acid plants.	1/18/80	5/6/80, 45 FR 29790.	
Part 6. Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions				
R 336.1601	Definitions	3/19/02	6/1/06, 71 FR 31093.	
R 336.1602	General provisions for existing sources of volatile organic compound emissions.	4/10/00	6/28/02, 67 FR 43548.	
R 336.1604	Storage of organic compounds having a true vapor pressure of more than 1.5 psia, but less than 11 psia, in existing fixed roof stationary vessels of more than 40,000 gallon capacity.	3/19/02	6/1/06, 71 FR 31093.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1605	Storage of organic compounds having a true vapor pressure of 11 or more psia in existing stationary vessels of more than 40,000 gallon capacity.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1606	Loading gasoline into existing stationary vessels of more than 2,000 gallon capacity at dispensing facilities handling 250,000 gallons per year.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1607	Loading gasoline into existing stationary vessels of more than 2,000 capacity at loading facilities.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1608	Loading gasoline into existing delivery vessels at loading facilities handling less than 5,000,000 gallons per year.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1609	Loading existing delivery vessels with organic compounds having a true vapor pressure of more than 1.5 psia at existing loading facilities handling 5,000,000 or more gallons of such compounds per year.	4/20/89	9/15/94, 59 FR 47254.	
R 336.1610	Existing coating lines; emission of volatile organic compounds from existing automobile, light-duty truck, and other product and material coating lines.	4/27/93	9/7/94, 59 FR 46182.	
R 336.1611	Existing cold cleaners	6/13/97	7/21/99, 64 FR 39034.	
R 336.1612	Existing open top vapor degreasers.	6/13/97	7/21/99, 64 FR 39034.	
R 336.1613	Existing conveyorized cold cleaners.	6/13/97	7/21/99, 64 FR 39034.	
R 336.1614	Existing conveyorized vapor degreasers.	6/13/97	7/21/99, 64 FR 39034.	
R 336.1615	Existing vacuum-producing system at petroleum refineries.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1616	Process unit turnarounds at petroleum refineries.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1617	Existing organic compound-water separators at petroleum refineries.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1618	Use of cutback paving asphalt	3/19/02	6/1/06, 71 FR 31093.	
R 336.1619	Perchloroethylene; emission from existing dry cleaning equipment; disposal.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1620	Emission of volatile organic compounds from the coating of flat wood paneling from existing coating lines.	4/27/93	9/7/94, 59 FR 46182.	
R 336.1621	Emission of volatile organic compounds from the coating of metallic surfaces from existing coating lines.	4/27/93	9/7/94, 59 FR 46182.	
R 336.1622	Emission of volatile organic compound from existing component of a petroleum refinery; refinery monitoring program.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1623	Storage of petroleum liquids having a true vapor pressure of more than 1.0 psia but less than 11.0 psia, in existing external floating roof stationary vessels of more than 40,000 gallon capacity.	3/19/02	6/1/06, 71 FR 31093.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1624	Emission of volatile organic compound from an existing graphic arts line.	11/18/93	9/7/94, 59 FR 46182.	
R 336.1625	Emission of volatile organic compound from existing equipment utilized in the manufacturing of synthesized pharmaceutical products.	11/30/00	6/1/06, 71 FR 31093.	
R 336.1627	Delivery vessels; vapor collection systems.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1628	Emission of volatile organic compounds from components of existing process equipment used in manufacturing synthetic organic chemicals and polymers.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1629	Emission of volatile organic compounds from components of existing process equipment used in processing natural gas; monitoring program.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1630	Emission of volatile organic compounds from existing paint manufacturing processes.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1631	Emission of volatile organic compounds from existing process equipment utilized in manufacture of polystyrene of other organic resins.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1632	Emission of volatile organic compounds form existing automobile, truck, and business machine plastic part coating lines.	4/27/93	9/7/94, 59 FR 46182.	
R 336.1651	Standards for degreasers	6/13/97	7/21/99, 64 FR 39034.	
Part 7. Emission Limitations and Prohibitions—New Sources of Volatile Organic Compound Emissions				
R 336.1702	General provisions for new sources of volatile organic compound emissions.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1705	Loading gasoline into delivery vessels at new loading facilities handling less than 5,000,000 gallons per year.	3/19/02	6/1/06, 71 FR 31093.	
R 336.1706	Loading delivery vessels with organic compounds having a true vapor pressure of more than 1.5 psia at new loading facilities handling 5,000,000 or more gallons of such compounds per year.	6/13/97	7/21/99, 64 FR 39034.	
R 336.1707	New cold cleaners	6/13/97	7/21/99, 64 FR 39034.	
R 336.1708	New open top vapor degreasers	6/13/97	7/21/99, 64 FR 39034.	
R 336.1709	New conveyorized cold cleaners	6/13/97	7/21/99, 64 FR 39034.	
R 336.1710	New conveyorized vapor degreasers.	6/13/97	7/21/99, 64 FR 39034.	
Part 8. Emission Limitations and Prohibitions—Oxides of Nitrogen				
R 336.1802	Applicability under oxides of nitrogen budget trading program.	5/20/04	12/23/04, 69 FR 76848.	
R 336.1803	Definitions for oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1804	Retired unit exemption from oxides of nitrogen budget trading program.	5/20/04	12/23/04, 69 FR 76848.	
R 336.1805	Standard requirements of oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1806	Computation of time under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1807	Authorized account representative under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1808	Permit requirements under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1809	Compliance certification under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1810	Allowance allocations under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1811	New source set-aside under oxides of nitrogen budget trading program.	5/20/04	12/23/04, 69 FR 76848.	
R 336.1812	Allowance tracking system and transfers under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1813	Monitoring and reporting requirements under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1814	Individual opt-ins under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1815	Allowance banking under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1816	Compliance supplement pool under oxides of nitrogen budget trading program.	12/4/02	12/23/04, 69 FR 76848.	
R 336.1817	Emission limitations and restrictions for Portland cement kilns.	12/4/02	12/23/04, 69 FR 76848.	
Part 9. Emission Limitations and Prohibitions—Miscellaneous				
R 339.1901	Air contaminant or water vapor, when prohibited.	1/18/80	5/6/80, 45 FR 29790.	
R 339.1906	Diluting and concealing emissions	3/19/02	6/1/06, 71 FR 31093.	
R 339.1910	Air-cleaning devices	1/18/80	5/6/80, 45 FR 29790.	
R 339.1911	Malfunction abatement plans	3/19/02	6/1/06, 71 FR 31093.	
R 339.1912	Abnormal conditions and breakdown of equipment.	1/18/80	5/6/80, 45 FR 29790.	
R 339.1915	Enforcement discretion in instances of excess emission resulting from malfunction, start-up, or shutdown.	5/27/02	2/24/03, 68 FR 8550.	
R 339.1916	Affirmative defense for excess emissions during start-up or shutdown.	5/27/02	2/24/03, 68 FR 8550.	
R 339.1930	Emission of carbon monoxide from ferrous cupola operations.	3/19/02	6/1/06, 71 FR 31093.	
Part 10. Intermittent Testing and Sampling				
R 336.2001	Performance tests by owner	3/19/02	6/1/06, 71 FR 31093, 6/1/06 71 FR 31093.	
R 336.2002	Performance tests by commission	3/19/02	6/1/06, 71 FR 31093.	
R 336.2003	Performance test criteria	3/19/02	6/1/06, 71 FR 31093.	
R 336.2004	Appendix A; reference test methods; adoption of federal reference test methods.	3/19/02	6/1/06, 71 FR 31093.	
R 336.2005	Reference test methods for delivery vessels.	3/19/02	6/1/06, 71 FR 31093.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.2006	Reference test method serving as alternate version of federal reference test method 25 by incorporating Byron analysis.	4/27/93	9/7/94, 59 FR 46182.	
R 336.2007	Alternate version of procedure L, referenced in R 336.2040(10).	3/19/02	6/1/06, 71 FR 31093.	
R 336.2011	Reference test method 5B	4/29/05	6/1/06, 71 FR 31093.	
R 336.2012	Reference test method 5C	10/15/04	6/1/06, 71 FR 31093.	
R 336.2013	Reference test method 5D	3/19/02	6/1/06, 71 FR 31093.	
R 336.2014	Reference test method 5E	10/15/04	6/1/06, 71 FR 31093.	
R 336.2021	Figures	3/19/02	6/1/06, 71 FR 31093.	
R 336.2030	Reference test method 9A	2/22/85	6/11/92, 57 FR 24752.	
R 336.2031	Reference test method 9B	2/22/85	6/11/92, 57 FR 24752.	
R 336.2032	Reference test method 9C	2/22/85	6/11/92, 57 FR 24752.	
R 336.2033	Test methods for coke oven quench towers.	2/22/85	6/11/92, 57 FR 24752.	
R 336.2040	Method for determination of volatile organic compound emissions from coating lines and graphic arts lines.	3/19/02	6/1/06, 71 FR 31093.	All except sections (9) and (10).
R 336.2041	Recording requirements for coating lines and graphic arts lines.	4/27/93	9/7/94, 59 FR 46182.	
	Part 11. Continuous Emission Monitoring			
R 336.2101	Continuous emission monitoring, fossil fuel-fired steam generators.	3/19/02	6/1/06, 71 FR 31093.	
R 336.2102	Continuous emission monitoring, sulfuric acid-producing facilities.	1/18/80	11/2/88, 53 FR 44189.	
R 336.2103	Continuous emission monitoring, fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries.	1/18/80	11/2/88, 53 FR 44189.	
R 336.2150	Performance specifications for continuous emission monitoring systems.	3/19/02	6/1/06, 71 FR 31093.	
R 336.2151	Calibration gases for continuous emission monitoring systems.	1/18/80	11/2/88, 53 FR 44189.	
R 336.2152	Cycling time for continuous emission monitoring systems.	1/18/80	11/2/88, 53 FR 44189.	
R 336.2153	Zero and drift for continuous emission monitoring systems.	1/18/80	11/2/88, 53 FR 44189.	
R 336.2154	Instrument span for continuous emission monitoring systems.	1/18/80	11/2/88, 53 FR 44189.	
R 336.2155	Monitor location for continuous emission monitoring systems.	3/19/02	6/1/06, 71 FR 31093.	
R 336.2159	Alternative continuous emission monitoring systems.	3/19/02	6/1/06, 71 FR 31093.	
R 336.2170	Monitoring data reporting and recordkeeping.	3/19/02	6/1/06, 71 FR 31093.	
R 336.2175	Data reduction procedures for fossil fuel-fired steam generators.	11/15/04	6/1/06, 71 FR 31093.	
R 336.2176	Data reduction procedures for sulfuric acid plants.	1/18/80	11/2/88, 53 FR 44189.	
R 336.2189	Alternative data reporting or reduction procedures.	3/19/02	6/1/06, 71 FR 31093.	
R 336.2190	Monitoring System Malfunctions	3/19/02	6/1/06, 71 FR 31093.	
R 336.2199	Exemptions from continuous emission monitoring requirements.	1/18/80	11/2/88, 53 FR 44189.	All except section (c).

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
Part 16. Organization, Operation and Procedures				
R 336.2606	Declaratory rulings requests	1/18/80	11/2/88, 53 FR 44189.	
R 336.2607	Consideration and disposition of declaratory rulings requests.	1/18/80	11/2/88, 53 FR 44189.	
Part 17. Hearings				
R 336.2701	Procedures from Administrative Procedures Act.	4/10/00	6/28/02, 67 FR 43548.	
R 336.2702	Service of notices and orders; appearances.	4/10/00	6/28/02, 67 FR 43548.	
R 336.2704	Hearing commissioner's hearings ..	1/18/80	11/2/88, 53 FR 44189.	
R 336.2705	Agency files and records, use in connection with hearings.	1/18/80	11/2/88, 53 FR 44189.	
R 336.2706	Commission hearings after hearing commissioner hearings.	1/18/80	11/2/88, 53 FR 44189.	
Executive Orders				
1991–31	Commission of Natural Resources, Department of Natural Resources, Michigan Department of Natural Resources, Executive Reorganization.	1/7/92	11/6/97, 62 FR 59995.	Introductory and concluding words of issuance; Title I: General, Part A Sections 1, 2, 4 & 5 and Part B; Title III: Environmental Protection, Part A Sections 1 & 2 and Part D; Title IV: Miscellaneous, Parts A & B, Part C Sections 1, 2 & 4 and Part D.
1995–18	Michigan Department of Environmental Quality, Michigan Department of Natural Resources, Executive Reorganization.	9/30/95	11/6/97, 62 FR 59995.	Introductory and concluding words of issuance; Paragraphs 1, 2, 3(a) & (g), 4, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, and 18.
State Statutes				
Act 250 of 1965, as amended	Tax Exemption Act	1972	5/31/72, 37 FR 10841.	
Act 348 of 1965, as amended	Air Pollution Act	1972	5/31/72, 37 FR 10841.	
Act 348 of 1965, as amended	Air Pollution Act	1986	2/17/88, 53 FR 4622.	Only section 7a.
Act 348 of 1965, as amended	Air Pollution Act	1990	3/8/94, 59 FR 10752.	Only sections 5 and 14a.
Act 127 of 1970	Michigan Environmental Protection Act.	7/27/70	5/31/72, 37 FR 10841.	
Act 283 of 1964, as amended	Weights and Measures Act	8/28/64	5/5/97, 62 FR 24341.	Only chapter 290, sections 613 and 615.
Act 44 of 1984, as amended	Michigan Motor Fuels Quality Act ..	11/13/93	5/5/97, 62 FR 24341.	Only chapter 290, sections 642, 643, 645, 646, 647, and 649.
Act 12 of 1993	Small Business Clean Air Assistance Act.	4/1/93	6/3/94, 59 FR 28785.	
Act 451 of 1994, as amended	Natural Resources and Environmental Protection Act.	3/30/95	2/10/98, 63 FR 6650.	Only sections 324.5524 and 324.5525.
House Bill 4165	Motor Vehicle Emissions Inspection and Maintenance Program Act.	11/13/93	2/21/96, 61 FR 31831.	
House Bill 4898	An Act to amend section 3 of Act 44 of 1984.	11/13/93	10/11/94, 59 FR 51379.	
House Bill 5016	Motor Vehicle Emissions Testing Program Act.	11/13/93	3/7/95, 60 FR 12459.	
Senate Bill 726	An Act to amend sections 2, 5, 6, 7, and 8 of Act 44 of 1984.	11/13/93	9/7/94, 59 FR 46182.	
Local Regulations				
City of Grand Rapids Ordinance 72–34.	City of Grand Rapids Air Pollution Control Regulations.	1972	5/31/72, 57 FR 10841.	Ordinance amends sections 9.35 and 9.36 of article 4, Chapter 151 Title IX of the Code of the City of Grand Rapids.

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
Muskegon County Air Pollution Control Rules.	Muskegon County Air Pollution Control Rules and Regulations, as amended.	3/27/73	5/16/84, 49 FR 20650.	Only article 14, section J.
Wayne County Air Pollution Control Regulations.	Wayne County Air Pollution Control Regulations.	3/20/69	5/16/80, 45 FR 29790.	
Wayne County variance	Minutes from 1981 board meeting	9/18/81	5/16/80, 45 FR 29790.	
Wayne County Air Pollution Control Ordinance.	Wayne County Air Pollution Control Ordinance.	11/18/85	5/13/93, 58 FR 28359.	Only: chapters 1, 2, 3, 5 (except for the portions of section 501 which incorporate by reference the following parts of the state rules: the quench tower limit in R 336.1331, Table 31, section C.8; the deletion of the limit in R 336.1331 for coke oven coal preheater equipment; and R 336.1355), 8 (except section 802), 9, 11, 12, 13, and appendices A and D.

(d) EPA approved state source-specific requirements.

EPA-APPROVED MICHIGAN SOURCE-SPECIFIC PROVISIONS

Name of source	Order No.	State effective date	EPA approval date	Comments
Allied Signal, Inc., Detroit Tar Plant, Wayne County.	4–1993	10/12/94	1/17/95, 60 FR 3346.	
American Colloid Plant	Permit 341–79	12/18/79	9/15/83, 48 FR 41403.	
American Colloid Plant	Permit 375–79	11/23/79	9/15/83, 48 FR 41403.	
Asphalt Products Company, Plant 5A, Wayne County.	5–1993	10/12/94	1/17/95, 60 FR 3346.	
Clark Oil and Refining Corporation, Calhoun County.	6–1981	6/24/82	12/13/82, 47 FR 55678.	
Clawson Concrete Company, Plant #1, Wayne County.	6–1993	10/12/94	1/17/95, 60 FR 3346.	
Conoco, Inc., Berrien County	17–1981	9/28/81	2/17/82, 47 FR 6828.	
Consumers Power Company, B. C. Cobb Plant, Muskegon County.	6–1979	12/10/79	5/1/81, 46 FR 24560.	
Consumers Power Company, J.H. Campbell Plant, Units 1 and 2, Ottawa County.	12–1984	10/1/84	1/12/87, 52 FR 1183.	
Continental Fibre Drum, Inc., Midland County.	14–1987	12/9/87	6/11/92, 57 FR 24752.	
Cummings-Moore Graphite Company, Wayne County.	7–1993	10/12/94	1/17/95, 60 FR 3346.	
CWC Castings Division of Textron, Muskegon County.	12–1979	2/15/80	5/16/84, 49 FR 20650.	
Delray Connecting Railroad Company, Wayne County.	8–1993	10/12/94	1/17/95, 60 FR 3346.	
Detroit Edison Company, Boulevard Heating Plant, Wayne County.	7–1981	4/28/81	5/4/82, 47 FR 19133.	
Detroit Edison Company, City of St. Clair, St. Clair County.	4–1978	11/14/78	8/25/80, 45 FR 56344.	
Detroit Edison Company, Monroe County.	9–1977	7/7/77	12/21/79, 44 FR 75635 (correction: 3/20/80, 45 FR 17997).	
Detroit Edison Company, River Rouge Power Plant, Wayne County.	9–1993	10/12/94	1/17/95, 60 FR 3346.	
Detroit Edison Company, Sibley Quarry, Wayne County.	10–1993	10/12/94	1/17/95, 60 FR 3346.	

EPA-APPROVED MICHIGAN SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Order No.	State effective date	EPA approval date	Comments
Detroit Water and Sewerage Department, Wastewater Treatment Plant, Wayne County.	11–1993	10/12/94	1/17/95, 60 FR 3346.	
Diamond Crystal Salt Company, St. Clair County.	13–1982	9/8/82	3/14/83, 48 FR 9256.	
Dow Chemical Company, Midland County.	12–1981	6/15/81	3/24/82, 47 FR 12625.	
Dow Chemical Company, West Side and South Side Power Plants, Midland County.	19–1981	7/21/81	3/24/82, 47 FR 12625.	Only sections A(3), B, C, D, and E.
Dundee Cement Company, Monroe County.	8–1979	10/17/79	8/11/80, 45 FR 53137.	
Dundee Cement Company, Monroe County.	16–1980	11/19/80	12/3/81, 46 FR 58673.	
Eagle Ottawa Leather Company, Ottawa County.	7–1994	7/13/94	10/23/95, 60 FR 54308.	
Edward C. Levy Company, Detroit Lime Company, Wayne County.	15–1993	10/12/94	1/17/95, 60 FR 3346.	
Edward C. Levy Company, Plant #1, Wayne County.	16–1993	10/12/94	1/17/95, 60 FR 3346.	
Edward C. Levy Company, Plant #3, Wayne County.	17–1993	10/12/94	1/17/95, 60 FR 3346.	
Edward C. Levy Company, Plant #4 and 5, Wayne County.	19–1993	10/12/94	1/17/95, 60 FR 3346.	
Edward C. Levy Company, Plant #6, Wayne County.	18–1993	10/12/94	1/17/95, 60 FR 3346.	
Edward C. Levy Company, Scrap Up-Grade Facility, Wayne County.	20–1993	10/12/94	1/17/95, 60 FR 3346.	
Enamalum Corporation, Oakland County.	6–1994	6/27/94	2/21/96, 61 FR 6545.	
Ferrous Processing and Trading Company, Wayne County.	12–1993	10/12/94	1/17/95, 60 FR 3346.	
Ford Motor Company, Rouge Industrial Complex, Wayne County.	13–1993	10/12/94	1/17/95, 60 FR 3346.	
Ford Motor Company, Utica Trim Plant, Macomb County.	39–1993	11/12/93	9/7/94, 59 FR 46182.	
Ford Motor Company, Vulcan Forge, Wayne County.	14–1993	10/12/94	1/17/95, 60 FR 3346.	
General Motors Corporation, Warehousing and Distribution Division, Genesee County.	18–1981	7/28/83	5/16/84, 49 FR 20649.	Original order effective 12/1/81, as altered effective 7/28/83.
General Motors Corporation, Buick Motor Division Complex, Flint, Genesee County.	10–1979	5/5/80	2/10/82, 47 FR 6013.	
General Motors Corporation, Buick Motor Division, Genesee County.	8–1982	4/2/84	8/22/88, 53 FR 31861.	Original order effective 7/12/82, as altered effective 4/2/82.
General Motors Corporation, Cadillac Motor Car Division, Wayne County.	12–1982	7/22/82	7/5/83, 48 FR 31022.	
General Motors Corporation, Central Foundry Division, Saginaw Malleable Iron Plant, Saginaw County.	8–1983	6/9/83	12/13/85, 50 FR 50907.	Supersedes paragraph 7.F of order 6–1980.
General Motors Corporation, Central Foundry Division, Saginaw Malleable Iron Plant, Saginaw County.	6–1980	7/30/82	8/15/83, 48 FR 36818.	Paragraph 7.F superseded by order 8–1983. Original order effective 6/3/80, as altered effective 7/30/82.
General Motors Corporation, Chevrolet Flint Truck Assembly, Genesee County.	10–1982	7/12/82	7/5/83, 48 FR 31022.	
General Motors Corporation, Chevrolet Motor Division, Saginaw Grey Iron Casting Plant and Nodular Iron Casting Plant, Saginaw County.	1–1980	4/16/80	2/10/82, 47 FR 6013.	
General Motors Corporation, Fisher Body Division, Fleetwood, Wayne County.	11–1982	7/22/82	7/5/83, 48 FR 31022.	

EPA-APPROVED MICHIGAN SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Order No.	State effective date	EPA approval date	Comments
General Motors Corporation, Fisher Body Division, Flint No. 1, Genesee County.	9–1982	7/12/82	7/5/83, 48 FR 31022.	
General Motors Corporation, GM Assembly Division, Washtenaw County.	5–1983	5/5/83	12/13/84, 49 FR 5345.	
General Motors Corporation, Hydra-Matic Division, Washtenaw County.	3–1982	6/24/82	3/4/83, 48 FR 9256.	
General Motors Corporation, Oldsmobile Division, Ingham County.	4–1983	5/5/83	12/13/84, 49 FR 5345.	
Hayes-Albion Corporation Foundry, Calhoun County.	2–1980	2/2/82	48 FR 41403	Original order effective 2/15/80, as altered effective 2/2/82.
J. H. Campbell Plant, Ottawa County.	5–1979	2/6/80	12/24/80, 45 FR 85004 (correction: 3/16/81 46 FR 16895).	Original order effective 6/25/79, as altered effective 2/6/80.
Keywell Corporation, Wayne County.	31–1993	10/12/94	1/17/95, 60 FR 3346.	
Lansing Board of Water and Light	4–1979	5/23/79	12/17/80, 45 FR 82926.	All except sections 7 A, B, C1, D, E, F, and section 8.
Marathon Oil Company, Muskegon County.	16–1981	7/31/81	2/22/82, 47 FR 7661.	
Marblehead Lime Company, Brennan Avenue Plant, Wayne County.	21–1993	10/12/94	1/17/95, 60 FR 3346.	
Marblehead Lime Company, River Rouge Plant, Wayne County.	22–1993	10/12/94	1/17/95, 60 FR 3346.	
McLouth Steel Company, Trenton Plant, Wayne County.	23–1993	10/12/94	1/17/95, 60 FR 3346.	
Michigan Foundation Company, Cement Plant, Wayne County.	24–1993	10/12/94	1/17/95, 60 FR 3346.	
Michigan Foundation Company, Sibley Quarry, Wayne County.	25–1993	10/12/94	1/17/95.60 FR 3346.	
Monitor Sugar Company, Bay County.	21–1981	10/29/81	5/19/82, 47 FR 21534.	
Morton International, Inc., Morton Salt Division, Wayne County.	26–1993	10/12/94	1/17/95, 60 FR 3346.	
National Steel Corporation, Great Lakes Division, Wayne County.	27–1993	10/12/94	1/17/95, 60 FR 3346.	
National Steel Corporation, Transportation and Materials Handling Division, Wayne County.	28–1993	10/12/94	1/17/95, 60 FR 3346.	
New Haven Foundry, Inc., Macomb County.	12–1980	8/14/80	2/10/82, 47 FR 6013.	
Northern Michigan Electric Cooperative Advance Steam Plant, Charlevoix County.	16–1979	1/10/80	46 FR 34584.	
Packaging Corporation of America, Manistee County.	23–1984	7/8/85	5/4/87, 52 FR 16246.	
Peerless Metal Powders, Incorporated, Wayne County.	29–1993	10/12/94	1/17/95, 60 FR 3346.	
Rouge Steel Company, Wayne County.	30–1993	10/12/94	1/17/95, 60 FR 3346.	
S. D. Warren Company, Muskegon	9–1979	10/31/99	1/27/81, 46 FR 8476.	
St. Marys Cement Company, Wayne County.	32–1993	10/12/94	1/17/95, 60 FR 3346.	
Traverse City Board of Light and Power, Grand Traverse County.	23–1981	1/4/82	5/19/82, 47 FR 21534.	
Union Camp Corporation, Monroe County.	14–1979	1/3/80	5/14/81, 46 FR 26641.	
United States Gypsum Company, Wayne County.	33–1993	10/12/94	1/17/95, 60 FR 3346.	
VCF Films, Inc., Livingston County	3–1993	6/21/93	9/7/94, 59 FR 46182.	
Woodbridge Corporation, Washtenaw County.	40–1993	11/12/93	9/7/94, 59 FR 46182.	
Wyandotte Municipal Power Plant, Wayne County.	34–1993	10/12/94	1/17/95, 60 FR 3346.	

(e) EPA approved nonregulatory and quasi-regulatory provisions.

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Implementation plan for the control of suspended particulates, sulfur oxides, carbon monoxide, hydrocarbons, nitrogen oxides, and photochemical oxidants in the state of Michigan.	Statewide	2/3/72	5/31/72, 37 FR 10841	Sections include: Air quality control regions, legal authority, air quality data, emission data, control strategy, control regulations, compliance plans and schedules, prevention of air pollution emergency episodes, air quality surveillance program, control of emission sources, organization and resources, and intergovernmental cooperation.
Reevaluation of control strategies.	Berrien and Ingham Counties.	3/3/72	10/28/72, 37 FR 23085.	
Reasons and justifications	Statewide	7/12/72	10/28/72, 37 FR 23085	Concerning general requirements of control strategy for nitrogen dioxide, compliance schedules, and review of new sources and modifications.
Public availability of emissions data.	Statewide	7/24/72	10/28/72, 37 FR 23085.	
Compliance schedules	Alpena, Baraga, Charlevoix, Huron, Ionia, Marquette, Midland, Muskegon, Oakland, Otsego, and St. Clair Counties.	5/4/73, 9/19/73, 10/23/73, and 12/13/73	8/5/74, 39 FR 28155.	
Compliance schedules	Allegan, Eaton, Emmet, Genesee, Huron, Ingham, Macomb, Monroe, Ottawa, Saginaw, and St. Clair Counties.	2/16/73 and 5/4/73	9/10/74, 39 FR 32606.	
Air quality maintenance area identifications for particulate matter.	Macomb, Oakland, Wayne and Monroe Counties.	6/27/74 and 10/18/74	6/2/75, 40 FR 23746.	
Carbon monoxide control strategy.	Saginaw area	4/25/79	5/6/80, 45 FR 29790.	
Ozone attainment demonstrations and transportation control plans.	Flint, Lansing and Grand Rapids urban areas.	4/25/79, 7/25/79, 10/12/79, 10/26/79, 11/8/79, 12/26/79	6/2/80, 45 FR 37188.	
Transportation control plans	Detroit urban area	4/25/79, 7/25/79, 10/12/79, 10/26/79, 11/8/79, 12/26/79	6/2/80, 45 FR 37188.	
Ozone control strategy for rural ozone nonattainment areas.	Marquette, Muskegon, Gratiot, Midland, Saginaw, Bay, Tuscola, Huron, Sanilac, Ottawa, Ionia, Shiawassee, Lapeer, Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Jackson, Berrien, Cass, Branch, Hillsdale, and Lenawee Counties.	4/25/79, 7/25/79, 10/12/79, 10/26/79, 11/8/79, 12/26/79	6/2/80, 45 FR 37188.	
Carbon monoxide and ozone demonstrations of attainment and I/M program.	Detroit urban area	4/25/79, 7/25/79, 10/12/79, 10/26/79, 11/8/79, 12/26/79, 3/20/80, 5/12/80, and 5/21/80	6/2/80, 45 FR 37192.	
Ambient air quality monitoring, data reporting, and surveillance provisions.	Statewide	12/19/79	3/4/81, 46 FR 15138.	
Transportation control plan	Niles	4/25/79, 10/26/79, 11/8/79, 12/26/79, 8/4/80, and 8/8/80	4/17/81, 46 FR 22373.	

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Provisions addressing sections 110(a)(2)(K), 126(a)(2), 127, and 128 of the Clean Air Act as amended in 1977.	Statewide	4/25/79 and 10/12/79	6/5/81, 46 FR 30082	Concerns permit fees, interstate pollution, public notification, and state boards.
Section 121, intergovernmental consultation.	Statewide	5/25/79	11/27/81, 46 FR 57893.	
Total suspended particulate studies.	Detroit area	3/7/80 and 4/21/81	2/18/82, 47 FR 7227.	
Lead plan	Statewide	12/27/79 and 2/9/81	4/13/82, 47 FR 15792.	
Reduction in size of Detroit ozone area.	Wayne, Oakland, Macomb, Livingston, Monroe, St. Clair, and Washtenaw Counties.	9/1/82	7/7/83, 48 FR 31199.	
Negative declarations	Wayne, Oakland and Macomb Counties.	10/10/83, 5/17/85, and 6/12/85	11/24/86, 51 FR 42221	Includes large petroleum dry cleaners, high-density polyethylene, polypropylene, and polystyrene resin manufacturers, and synthetic organic chemical manufacturing industry—oxidation.
Information relating to order 8–1982: letter dated 9/6/84 from Michigan Department of Natural Resources to EPA.	Genesee County	9/6/84	8/22/88, 53 FR 31861.	
Information relating to order 14–1987: letter dated 12/17/87 from Michigan Department of Natural Resources to EPA.	Midland County	12/17/87	10/3/89, 54 FR 40657.	
Appendices A and D of Wayne County Air Pollution Control Ordinance.	Wayne County	10/10/86	5/13/93, 58 FR 28359	Effective 11/18/85.
Information supporting emissions statement program.	Statewide	11/16/92, 10/25/93, and 2/7/94	3/8/94, 59 FR 10752.	
1990 base year emissions inventory.	Grand Rapids and Muskegon areas.	1/5/93	7/26/94, 59 FR 37944.	
Section 182(f) NO_X exemption.	Detroit-Ann Arbor area	11/12/93	8/10/94, 59 FR 40826.	
Negative declarations	Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, Wayne, Kent, Ottawa, and Muskegon Counties.	3/30/94	9/7/94, 59 FR 46182	Includes: Large petroleum dry cleaners, SOCMI air oxidation processes, high-density polyethylene and polypropylene resin manufacturing and pneumatic rubber tire manufacturing.
I/M program	Grand Rapids and Muskegon areas.	11/12/93 and 7/19/94	10/11/94, 59 FR 51379	Includes: document entitled "Motor Vehicle Emissions Inspection and Maintenance Program for Southeast Michigan, Grand Rapids MSA, and Muskegon MSA Moderate Nonattainment Areas," RFP, and supplemental materials.
1990 base year emissions inventory and 1-hour ozone maintenance plan.	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	11/12/93	3/7/95, 60 FR 12459.	
Section 182(f) NO_X exemptions.	Clinton, Ingham, Eaton, and Genesee Counties.	7/1/94 and 7/8/94	4/27/95, 60 FR 20644.	

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
Section 182(f) NO_X exemptions.	Kent, Ottawa, Muskegon, Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Gratiot, Genesee, Hillsdale, Ingham, Ionia, Jackson, Kalamazoo, Lenawee, Midland, Montcalm, St. Joseph, Saginaw, Shiawassee, and Van Buren Counties.	7/13/94	1/26/96, 61 FR 2428.	
1-hour ozone maintenance plan.	Grand Rapids area	3/9/95	6/21/96, 61 FR 31831.	
PM–10 maintenance plan	Wayne County	7/24/95	8/5/96, 61 FR 40516.	
General conformity	Statewide	11/29/94	12/18/96, 61 FR 66607.	
Transportation conformity	Statewide	11/24/94	12/18/96, 61 FR 66609.	
7.8 psi Reid vapor pressure gasoline-supplemental materials.	Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe Counties.	5/16/96, 1/5/96, and 5/14/96	5/5/97, 62 FR 24341	Includes: letter from Michigan Governor John Engler to Regional Administrator Valdas Adamkus, dated 1/5/96, letter from Michigan Director of Environmental Quality Russell Harding to Regional Administrator Valdas Adamkus, dated 5/14/96, and state report entitled "Evaluation of Air Quality Contingency Measures for Implementation in Southeast Michigan".
Section 182(f) NO_X exemption.	Muskegon County	11/22/95	9/26/97, 62 FR 50512.	
Carbon monoxide maintenance plan.	Detroit area (portions of Wayne, Oakland, and Macomb Counties).	3/18/99	6/30/99, 64 FR 35017.	
1-hour ozone maintenance plan.	Muskegon County	3/9/95	8/30/00, 65 FR 52651.	
1-hour ozone maintenance plan.	Allegan County	9/1/00 and 10/13/00	11/24/00, 65 FR 70490.	
1-hour ozone maintenance plan.	Genesee, Bay Midland, and Saginaw Counties.	5/9/00	11/13/00, 65 FR 67629.	
1-hour ozone maintenance plan revision.	Muskegon County	3/22/01	8/6/01, 66 FR 40895	Revision to motor vehicle emission budgets.

[FR Doc. E6–14708 Filed 9–5–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

EPA–HQ–OPP–2006–0504; FRL–8091–4

Propoxycarbazone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes increased tolerances for residues of propoxycarbazone in or on wheat forage, meat byproducts and milk. Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 6, 2006. Objections and requests for hearings must be received on or before November 6, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2006-0504. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division

(7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6224; e-mail address: *miller.joanne@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.* You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2006-0504 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 6, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2006-0504, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of July 5, 2006 (71 FR 38151) (FRL–8073–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5F6959) by Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180. 600 be amended by increasing tolerances for residues of the herbicide propoxycarbazone, methyl 2-[[[(4,5-dihydro-4-methyl-5-oxo-3-propoxy-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl]benzoate (MKH-6561) and its metabolite, methyl 2-[[[(4,5-dihydro-3-(2-hydroxypropoxy)-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl)carbonyl]amino]sulfonyl] benzoate (Pr-2-OH MKH-6561), in or on wheat, forage from 1.5 parts per million (ppm) to 11 ppm; and of propoxycarbazone in or on animal commodities cattle/goat/horse/sheep, meat byproducts from 0.05 ppm to 0.30 ppm; and milk from 0.004 ppm to 0.03 ppm. Based on the scientific review of the residue chemistry data, EPA is raising the wheat forage tolerance to 17 ppm. The petitioner proposed raising the tolerances in order that wheat forage may be grazed by livestock immediately after the herbicide's application. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for increasing tolerances for residues of the herbicide propoxycarbazone and its metabolite in or on wheat, forage to 17 ppm; and for

propoxycarbazone in or on animal commodities cattle/goat/horse/sheep, meat byproducts to 0.30 ppm; and milk to 0.03 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by propoxycarbazone as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the **Federal Register** of July 7, 2004 (69 FR 40774) (FRL-7365-7).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases.

A summary of the toxicological endpoints for propoxycarbazone used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of July 7, 2004 (69 FR 40774) (FRL-7365-7).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.600) for the residues of propoxycarbazone, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from propoxycarbazone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

No such effects were identified in the toxicological studies for propoxycarbazone therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For the chronic analyses, tolerance-level residues were assumed for all food commodities with current or proposed propoxycarbazone-sodium tolerances, and it was assumed that all of the crops included in the analysis were treated. Percent Crop Treated (PCT) and/or anticipated residues were not used in the chronic risk assessment.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for propoxycarbazone in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of propoxycarbazone.

The Agency uses the FQPA Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. Both FIRST and PRZM/EXAMS incorporate an index reservoir environment, and both models include a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a screen for sorting out pesticides for which it is unlikely that drinking water concentrations would exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency uses the estimated environmental concentrations (EECs), which are the model estimates of a pesticide's concentration in water. EECs derived from these models are used to quantify drinking water exposure and risk as a %RfD or %PAD.

Based on the FIRST and SCI-GROW models, the estimated environmental concentrations (EECs) of propoxycarbazone for chronic exposures are estimated to be 0.9 ppb for surface water and 0.4 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Propoxycarbazone is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to propoxycarbazone and any other substances and propoxycarbazone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that propoxycarbazone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which

chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Conclusion.* EPA has determined that there is reliable data showing that it will be safe for infants and children to remove the FQPA safety factor. The FQPA factor is removed based on the following:

i. There is no quantitative or qualitative evidence of increased susceptibility of rat and rabbit fetuses to *in utero* exposure to propoxycarbazone-sodium in developmental toxicity studies. There is no quantitative or qualitative evidence of increased susceptibility to propoxycarbazone-sodium following pre-/post-natal exposure to a 2-generation reproduction study;

ii. There is no concern for developmental neurotoxicity resulting from exposure to propoxycarbazone-sodium. A developmental neurotoxicity study (DNT) study is not required;

iii. The toxicological database is complete for FQPA assessment;

iv. The chronic dietary food exposure assessment utilizes HED recommended tolerance level residues and 100% CT information for all commodities. By using these screening-level assessments, actual exposures/risks will not be underestimated; and

v. The dietary drinking water assessment utilizes water concentration values generated by model and associated modeling parameters which are designed to provide conservative, health protective, high-end estimates of water concentrations which will not likely be exceeded.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* An effect of concern attributable to a single exposure (dose) was not identified from the oral toxicity studies including the developmental toxicity studies in rat and rabbits. No acute risk is expected from exposure to propoxycarbazone-sodium.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to propoxycarbazone from food and drinking water will utilize < 1 % of the cPAD for the U.S. population, and < 1 % of the cPAD for Children 1-2 years old. There are no residential uses for propoxycarbazone that result in chronic residential exposure to propoxycarbazone.

3. *Short-term risk.* Propoxycarbazone is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure to propoxycarbazone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectroscopy) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established for propoxycarbazone-sodium on wheat, meat, meat byproducts or milk.

C. Response to Comments

Public comments were received from B. Sachau who objected to the proposed tolerances because of the amounts of pesticides already consumed and carried by the American population. She further indicated that testing conducted on animals have absolutely no validity and are cruel to the test animals. B. Sachau's comments contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to propoxycarbazone, including all anticipated dietary exposures and all other exposures for which there is reliable information. EPA has responded to B. Sachau's generalized comments on numerous previous occasions. [January 7, 2005, 70 FR 1349, 1354 (FRL-7691-4); October 29, 2004, 69 FR 63083, 63096 (FRL-7681-9)].

V. Conclusion

Therefore, the tolerances are increased for residues of the herbicide propoxycarbazone and its metabolite in or on wheat, forage to 17 ppm; and for propoxycarbazone in or on animal commodities cattle/goat/horse/sheep, meat byproducts to 0.30 ppm; and milk to 0.03 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety*

Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, 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. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 28, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.600 is amended by revising the tolerance levels for wheat, forage in the table in paragraph (a)(1) and for cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts; milk; and sheep, meat byproducts in the table in paragraph (a)(2) to read as follows:

§ 180.600 Propoxycarbazone; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Wheat, forage	17
* * *	* *

(2) * * *

Commodity	Parts per million
* * *	* *
Cattle, meat byproducts	0.3
* * *	* *
Goat, meat byproducts	0.3
* * *	* *
Horse, meat byproducts	0.3
Milk	0.03
* * *	* *
Sheep, meat byproducts	0.3

* * * * *

[FR Doc. E6–14641 Filed 9–5–06; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0664; FRL–8089–3]

Paraquat Dichloride; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of paraquat dichloride in or on various food and feed commodities. The tolerances were requestd by Syngenta Crop Protection Inc. through submission of several pesticide petitions. Syngenta Crop Protection Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 6, 2006. Objections and requests for hearings must be received on or before November 6, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0664. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., 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 in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Hope Johnson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–5410; e-mail address: *johnson.hope@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0664 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 6, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0664, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 29, 2005 (70 FR 124) (FRL–7718–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 1E6332, PP 1E6319, PP 1E6223, PP 2F6433, PP 3E6763) by Syngenta Crop Protection Inc, P.O. Box 18300, Greensboro, NC 27419–8300. The petitions requested that 40 CFR 180.205 be amended by establishing tolerances for residues of the herbicide paraquat dichloride as follows: In or on okra at 0.05 ppm (PP 1E6332); onion (dry bulb) at 0.1 ppm (PP 1E6319); tanier at 0.05 ppm (PP 1E6223); animal feed, nongrass, group at 5.0; barley, hay at 3.0 ppm; barley, straw at 1.0 ppm; beet, sugar, tops at 0.05 ppm ; berry group at 0.05 ppm; cattle, kidney at 0.3 ppm; cotton gin byproducts at 82.0 ppm; cotton, seed at 5.0 ppm; cranberry at 0.05 ppm; ; fruit, pome, group at 0.05 ppm; fruit, stone, group at 0.05 ppm; goat, kidney at 0.3 ppm; grape at 0.05 ppm; hog, kidney at 0.3 ppm; hops, cone, dry at 0.5 ppm; horse, kidney at 0.3 ppm; nut, tree, group at 0.05 ppm; pea and bean, dried shelled, except soybean, subgroup at 0.30 ppm; pea and bean, succulent, shelled, subgroup at 0.05 ppm; sheep, kidney at 0.3 ppm; sorghum, forage at 0.1 ppm; soybean, seed at 0.70 ppm; soybean, forage at 0.40 ppm; soybean, hay at 6.0 ppm; soybean, aspirated grain fractions at 60.0 ppm; vegetable, brassica leafy, group at 0.05 ppm; vegetable, cucurbit, group at 0.05 ppm; vegetable, fruiting, group at 0.05 ppm; vegetable, legume, edible-podded, subgroup at 0.05 ppm; wheat, grain at 1.5 ppm; wheat, forage at 0.40 ppm; wheat, hay at 3.0 ppm; wheat, straw at 40.0 ppm; wheat, aspirated grain fractions at 65.0 ppm (PP 2F6433); ginger at 0.1 ppm (PP 3E6763). That notice included a summary of the petition prepared by Syngenta Crop Protection Inc., the registrant. As a result of the review of the residue field trials, the proposed tolerance level for barley, hay was subsequently revised to 3.5 ppm. One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV (C) below.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will

result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of paraquat dichloride on animal feed, nongrass, group 18, forage at 75 ppm; animal feed, nongrass, group 18, hay at 210 ppm; barley, hay at 3.5 ppm; barley, straw at 1.0 ppm; beet, sugar, tops at 0.05 ppm; berry group 13 at 0.05 ppm; cattle, kidney at 0.50 ppm; cotton, gin byproducts at 110 ppm; cotton, undelinted seed at 3.5 ppm; cranberry at 0.05 ppm; fruit, pome, group 11 at 0.05 ppm; fruit, stone, group 12 at 0.05 ppm; ginger at 0.10 ppm; goat, kidney at 0.50 ppm; grain, aspirated fractions at 65 ppm; grape at 0.05 ppm; hog, kidney at 0.50 ppm; hop, dried cones at 0.50 ppm; horse, kidney at 0.50 ppm; nut, tree, group 14 at 0.05 ppm; okra at 0.05 ppm; onion, bulb at 0.10 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except guar bean at 0.30 ppm; pea and bean, succulent shelled, subgroup 6B at 0.05 ppm; sheep, kidney at 0.50 ppm; sorghum, forage, forage at 0.10 ppm; sorghum, grain, forage at 0.10 ppm; soybean, forage at 0.40 ppm; soybean, hay at 10 ppm; soybean, hulls at 4.5 ppm; soybean, seed at 0.70 ppm; vegetable, Brassica leafy, group 5 at 0.05 ppm; vegetable, cucurbit, group 9 at 0.05 ppm; vegetable, fruiting, group 8 at 0.05 ppm; vegetable, legume, edible podded, subgroup 6A at 0.05 ppm; wheat, forage at 0.50 ppm; wheat, grain at 1.1 ppm; wheat, hay at 3.5 ppm; and wheat, straw at 50 ppm. Additionally, EPA has determined that the current tolerance with regional registrations for residues of paraquat dichloride on tanier at 0.05 ppm may be extended to the State of Florida. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by paraquat dichloride as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the index of docket ID number EPA–HQ–OPP–2006–0664.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/health/human.htm.*

A summary of the toxicological endpoints for dichloride used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PARAQUAT DICHLORIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–50 years of age)	NOAEL = 1.25 mg/kg/day UF = 300 Acute RfD = 0.0125 mg/kg/day	Special FQPA SF = 1X aPAD = 0.0042 mg/kg/day	Multi-generation rat study LOAEL = 3.75 mg/kg/day based on increased invidences of alveolar histiocytes in both sexes
Acute Dietary (General population including infants and children)	NOAEL = 1.25 mg/kg/day UF = 100 Acute RfD = 0.0125 mg/kg/day	Special FQPA SF = 1X aPAD = 0.0125 mg/kg/day	Multi-generation rat study LOAEL = 3.75 mg/kg/day based on increased incidences of alveolar histiocytes in both sexes
Chronic Dietary (All populations)	NOAEL= 0.45 mg/kg/day UF = 100 Chronic RfD = 0.0045 mg/kg/day	Special FQPA SF = 1X cPAD = 0.0045 mg/kg/day	Chronic toxicity in dogs LOAEL = 0.93 mg/kg/day based on increased severity of chronic pneumonitis and gross lung lesions in both sexes, and focal pulmonary granulomas in males

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR PARAQUAT DICHLORIDE FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-Term/Intermediate-Term Dermal (1 day to 6 months)	NOAEL = 1.25 mg/kg/day (dermal absorption factor = 0.3%)	LOC = MOE = 100	Multi-generation rat study LOAEL = 3.75 mg/kg/day based on increased incidences of alveolar histiocytes in both sexes
Long-Term Dermal (> 6 months)	NOAEL= 0.45 mg/kg/day (dermal absorption factor = 0.3%)	LOC = MOE = 100	Chronic toxicity in dogs LOAEL = 0.93 mg/kg/day based on increased severity of chronic pneumonitis and gross lung lesions in both sexes, and focal pulmonary granulomas in males
Short-Term, Intermediate-Term, Long-TermInhalation (1 to > 6 months)	NOAEL= 0.01 µg/L (inhalation absorption factor = 100%)	LOC = MOE = 100	21–day inhalation toxicity study LOAEL = 0.10 µg/L based on squamous keratinizing metaplasia and hyperplasia of the epithelium of the larynx
Cancer (oral, dermal, inhalation)	Classification: Category E (evidence of non-carcinogenicity to humans)		

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been previously established (40 CFR 180.205) for the residues of paraquat dichloride, in or on a variety of raw agricultural commodities, including egg, milk, and the meat, fat and meat by-products of cattle, goats, hogs, horses, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from paraquat dichloride in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

The Dietary Exposure Evaluation Model (DEEM-FCID™, Version 2.03) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and a supplemental children's survey conducted in 1998 and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A partially refined, probabilistic acute dietary exposure assessment using tolerance-level residues for all registered and proposed commodities, maximum estimates of percent crop treated information for some registered commodities, and DEEM default processing factors for some commodities, was conducted for the general U.S. population and various population subgroups. Drinking water was incorporated directly into the dietary assessment using a high-end monitoring value of 1.52 ppb.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™, Version 2.03), which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: A partially refined, chronic dietary exposure assessment using tolerance-level residues for all registered and proposed commodities, average estimates of percent crop treated information for some registered commodities, and DEEM default processing factors for some commodities, was conducted for the general U.S. population and various population subgroups. Drinking water was incorporated directly into the dietary assessment using a high-end monitoring value of 1.52 ppb.

iii. *Cancer.* Paraquat dichloride is a Category E chemical (evidence of non-carcinogenicity to humans).

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

For the acute assessment, maximum percent crop treated information was used on the following commodities: alfalfa 2.5%, almonds 30%, apples 30%, apricots 20%, artichokes 40%, asparagus 15%, avocados 5%, barley 2.5%, green beans 3%, blackberries 40%, blueberries 15%, broccoli 3%, Brussels sprouts 3%, cabbage 3%, cantaloupes 3%, carrots 3%, cherries 30%, corn 5%, cotton 20%, cucumbers 30%, dry beans/peas 5%, eggplant 20%, figs 10%, garlic 5%, grapefruit 5%, grapes 55%, hazelnuts (filberts) 70%, kiwifruit 3%, lemons 3%, lettuce 3%, nectarines 25%, olives 10%, onions 5%, oranges 10%, peaches 40%, peanuts 35%, pears 15%, green peas 3%, pecans 15%, peppers 30%, pistachios 45%, potatoes 5%, prunes and plums 20%, pumpkins 5%, raspberries 75%, rice 2.5%, safflower 2.5%, sorghum 2.5%, soybeans 2.5%, squash 10%, strawberries 25%, sugar beets 2.5%, sugarcane 5%, sunflowers 2.5%, sweet corn 5%, tangelos 30%, tangerines 10%, tomatoes 15%, walnuts 20%, watermelons 10%, and wheat 2.5%.

For the chronic assessment, average percent crop treated information was

used on the following commodities: alfalfa 1%, almonds 30%, apples 20%, apricots 10%, artichokes 30%, asparagus 10%, avocados 1%, barley 1%, green beans 1%, blackberries 30%, blueberries 10%, broccoli 1%, cabbage 1%, cantaloupes 1%, carrots 1%, cherries 20%, corn 1%, cotton 20%, cucumbers 5%, dry beans/peas 1%, eggplant 20%, figs 10%, garlic 1%, grapefruit 5%, grapes 20%, hazelnuts (filberts) 55%, hops 80%, kiwifruit 1%, lemons 1%, lettuce 1%, nectarines 15%, olives 5%, onions 1%, oranges 5%, peaches 30%, peanuts 25%, pears 10%, green peas 1%, pecans 10%, peppers 10%, pistachios 30%, potatoes 5%, prunes and plums 15%, pumpkins 5%, raspberries 70%, rice 1%, safflower 1%, sorghum 1%, soybeans 1%, squash 5%, strawberries 15%, sugar beets 1%, sugarcane 5%, sunflowers 1%, sweet corn 1%, tangelos 20%, tangerines 5%, tomatoes 5%, walnuts 15%, watermelons 5%, and wheat 1%.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available Federal, State, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of 5% except for those situations in which the average PCT is less than one. In those cases 1% is used as the average. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available Federal, State, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of 5%, except for those situations in which the maximum PCT is 2.5%. In those cases, 2.5% is used as the maximum. In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent 6 years.

2. *Dietary exposure from drinking water.* Paraquat dichloride undergoes minimal degradation in the environment, and thus is very persistent (as parent). However, its very high propensity to bind to solids, particularly clay, makes it very immobile. In addition, paraquat dichloride does not readily appear to desorb from clay. The greatest cause for concern is likely to be erosion of contaminated sediments off-site and subsequent redeposition onto non-target areas (especially surface water bodies). There is an additional (minor) concern for the one proposed new usage (wheat) that includes aerial spray; however, this use entails very small amounts (relative to all other uses), so spray drift onto nearby surface water drinking water sources should be fairly limited. Because of its very low mobility and strong tendency to bind tightly to soils, paraquat dichloride contamination of drinking water supplies derived from groundwater is expected to be highly unlikely. In addition, the strong binding characteristics of paraquat dichloride are likely to render most residues in raw drinking water sources removable through sedimentation processes, which are typically included as part of standard drinking water treatments.

Because of its strong cation-exchange sorption to soils, modeling is not appropriate for paraquat dichloride. In most circumstances, the levels of paraquat dichloride residues in surface or ground water are expected to be insignificant. Because it should sorb to suspended sediment, coagulation and flocculation processes in drinking water treatment plants are likely to remove any paraquat dichloride residues present in the raw water. Residues of paraquat dichloride in drinking water derived from surface supplies can therefore be assumed to be negligible. For residues in ground water however, the EPA used the value of 1.52 ppb reported in Virginia, for human exposure assessment, as this represents a high-end, but not worst-case value from the available monitoring data. As a result, the groundwater monitoring value of 1.52 ppb was used for both the acute and chronic analyses. This estimate of drinking water concentration was directly entered into the dietary exposure model (DEEM-FCID™).

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Paraquat dichloride is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to paraquat dichloride and any other substances and paraquat dichloride does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that paraquat dichloride has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity.* Prenatal developmental studies in rats and mice show that developmental effects only occur in the presence of maternal toxicity. No effect on reproduction was observed. Fetal effects were limited to delayed ossification and decreased body weights. There was no indication from these studies that paraquat dichloride is involved in endocrine disruption.

3. *Conclusion.* The toxicological database for paraquat dichloride is incomplete, lacking an acceptable prenatal developmental study in a non-rodent species. However, four acceptable developmental studies in rats and mice have been submitted for paraquat dichloride, and the Agency,

considers the toxicology database adequate for hazard characterization, and to address FQPA concerns. The Agency is retaining a 3x uncertainty factor for the acute dietary subpopulation Females 13-49 years old because of residual concerns for developing fetuses. All other populations will have a 1x safety factor. The FQPA safety factor was reduced to (1x) for the following reasons:

(i) There is no evidence of neurotoxicity;

(ii) There is no indication of quantitative or qualitative increased susceptibility of rats or mice to *in utero* and/or prenatal/postnatal exposure of rats;

(iii) The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children; and

(iv) There are no registered residential uses of paraquat dichloride.

E. Aggregate Risks and Determination of Safety

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to paraquat dichloride will occupy 33% of the aPAD for the U.S. population, 54% of the aPAD for females 13–49 years old, 52% of the aPAD for all infants (<1 year old), and 66% of the aPAD for children 1–2 years old. Acute aggregate risk consists of risks resulting from exposure to residues in food and drink water only. The acute dietary exposure analysis included both food and drinking water, and as a result, the acute aggregate risk assessment is equivalent to the acute dietary analysis.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO PARAQUAT DICHLORIDE

Population Subgroup	Dietary Exposure(mg/kg/day)	% aPAD
General U.S. Population	0.004064	33
All Infants (<1 year old)	0.006550	52
Children 1–2 years old	0.008240	66
Females 13–49 years old	0.002284	54

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to paraquat dichloride from food will utilize 8% of the cPAD for the U.S. population, 13% of the cPAD for all infants (<1 year old), and 26% of the cPAD for children 1–2 years old. There are no residential uses for paraquat dichloride that result in chronic residential exposure to paraquat dichloride. Chronic aggregate risk consists of risks resulting from exposure to residues in food and drink water only. The chronic dietary exposure analysis included both food and drinking water, and as a result, the chronic aggregate risk assessment is equivalent to the chronic dietary analysis.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO PARAQUAT DICHLORIDE

Population/Subgroup	Dietary Exposure (mg/kg/day)	%/cPAD
General U.S. Population	0.000353	8
All Infants (<1 year old)	0.000584	13
Children 1–2 years old	0.001175	26
Females 13–49 years old	0.000250	6

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Paraquat dichloride is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Paraquat dichloride is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* Paraquat dichloride is a Category E chemical (evidence of non-carcinogenicity in humans). As a result, an aggregate cancer risk assessment was not conducted.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to paraquat dichloride residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. Method I of Pesticide Analytical Manual (PAM), Volume II (spectrophotometric), is adequate for plant tolerance enforcement purposes. In addition, Method 1B (spectrophotometric) has also been found to adequately recover paraquat cation residues. Method IA of PAM Volume II (spectrophotometric) is available for animal tolerance enforcement purposes. Method 4B of PAM Volume II (HPLC) is also available for animal tolerance enforcement purposes.

Adequate enforcement methodology (specify method; example--gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

The Codex Alimentarius Commission has established several maximum residue limits (MRLs) for paraquat dichloride residues in various commodities. The Codex and U.S. tolerances are in harmony with respect to MRL/tolerance expression; both regulate the parent paraquat cation only. Compatibility between U.S. tolerances and Codex MRLs exists for eggs, passion fruit, sunflower seed, and vegetables [including Brassica leafy vegetables, carrots, cassava, corn (sweet), edible podded legume vegetables, fruiting vegetables, lettuce, onions (green), pigeon peas, turnips (roots and tops), and yams], milk and ruminant tissue, and poultry eggs. Incompatibilities of U.S. tolerances and Codex MRLs on the following raw plant commodities remain because of differences in agricultural practices: cotton seed, dry hops, maize, olives, sorghum, dry soya bean and certain vegetables (such as bulb onion). No Canadian or Mexican MRLs have been established for paraquat dichloride.

C. Response to Comments

Several comments were received from a private citizen objecting to pesticide body load, IR-4 profiteering, animal testing, establishing tolerances, and pesticide residues. The Agency has received these same comments from this commenter on numerous previous occasions. Refer to the following **Federal Register** cites: 70 FR 37686, June 30, 2005; 70 FR 1354, January 7, 2005;, 69 FR 63096–63098, October 29, 2004; for the Agency's response to these objections.

V. Conclusion

Therefore, tolerances are established for residues of paraquat dichloride in or on animal feed, nongrass, group 18, forage at 75 ppm; animal feed, nongrass, group 18, hay at 210 ppm; barley, hay at 3.5 ppm; barley, straw at 1.0 ppm; beet, sugar, tops at 0.05 ppm; berry group 13 at 0.05 ppm; cattle, kidney at 0.50 ppm; cotton, gin byproducts at 110 ppm; cotton, undelinted seed at 3.5 ppm; cranberry at 0.05 ppm; fruit, pome, group 11 at 0.05 ppm; fruit, stone, group 12 at 0.05 ppm; ginger at 0.10 ppm; goat, kidney at 0.50 ppm; grain, aspirated fractions at 65 ppm; grape at 0.05 ppm; hog, kidney at 0.50 ppm; hop, dried cones at 0.50 ppm; horse, kidney at 0.50 ppm; nut, tree, group 14 at 0.05 ppm; okra at 0.05 ppm; onion, bulb at 0.10 ppm; pea and bean, dried shelled, except soybean, subgroup 6C, except guar bean at 0.30 ppm; pea and bean, succulent shelled, subgroup 6B at 0.05 ppm; sheep, kidney at 0.50 ppm; sorghum, forage, forage at 0.10 ppm; sorghum, grain, forage at 0.10 ppm; soybean, forage at 0.40 ppm; soybean, hay at 10 ppm; soybean, hulls at 4.50 ppm; soybean, seed at 0.70 ppm; vegetable, Brassica leafy, group 5 at 0.05 ppm; vegetable, cucurbit, group 9 at 0.05 ppm; vegetable, fruiting, group 8 at 0.05 ppm; vegetable, legume, edible podded, subgroup 6A at 0.05 ppm; wheat, forage at 0.50 ppm; wheat, grain at 1.1 ppm; wheat, hay at 3.5 ppm; and wheat, straw at 50 ppm..

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, 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. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the

distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 2006.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.205, the table to paragraph (a) is amended as follows:

■ a. By adding entries for animal feed, nongrass, group 18, forage; animal feed, nongrass, group 18, hay; barley, hay; barley, straw; berry, group 13; cotton, gin byproducts; cranberry; fruit, pome group 11; fruit, pome group 12; grain, aspirated fractions; ginger; grape; okra; nut, tree, group 14; onion, bulb; pea and bean, dried shelled, except soybean, subgroup 6C, except guar bean; pea and bean, succulent shelled, subgroup 6B; sorghum, forage, forage; sorghum, grain, forage; soybean, hay; soybean, hulls; soybean, seed; vegetable, Brassica leafy, group 5; vegetable, cucurbit, group 9; vegetable, fruiting, group 8; vegetable, legume, edible podded, subgroup 6A; wheat, forage; wheat, hay; and wheat, straw.

■ b. By revising the entries for beet, sugar, tops; cattle, kidney; cotton, undelinted seed;-goat, kidney; hog, kidney; hop, dried cone; horse, kidney; sheep, kidney; soybean, forage; and wheat, grain.

■ c. By removing from the table in paragraph (a) the entries for onion, dry bulb; sorghum, forage; and vegetable, fruiting.

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Animal feed, nongrass, group 18, forage	75
Animal feed, nongrass, group 18, hay	210
* * * * *	
Barley, hay	3.5
Barley, straw	1.0
* * * * *	
Beet, sugar, tops	0.05
Berry group 13	0.05
* * * * *	
Cattle, kidney	0.50
* * * * *	
Cotton, gin byproducts	110
Cotton, undelinted seed	3.5
Cranberry	0.05
* * * * *	
Fruit, pome, group 11	0.05
Fruit, pome, group 12	0.05
Ginger	0.10
Goat, kidney	0.50
* * * * *	
Grain, aspirated fractions	65
Grape	0.05
* * * * *	
Hog, kidney	0.50
* * * * *	
Hop, dried cones	0.50
* * * * *	
Horse, kidney	0.50
* * * * *	
Nut, tree, group 14	0.05
Okra	0.05
* * * * *	
Onion, bulb	0.10
* * * * *	
Pea and bean, dried shelled, except soybean, subgroup 6C, except guar bean	0.30
Pea and bean, succulent shelled, subgroup 6B	0.05
* * * * *	
Sheep, kidney	0.50
* * * * *	
Sorghum, forage, forage	0.10
* * * * *	
Sorghum, grain, forage	0.10
* * * * *	
Soybean, forage	0.40
Soybean, hay	10
Soybean, hulls	4.5
Soybean, seed	0.70
* * * * *	
Vegetable, Brassica leafy, group 5	0.05
Vegetable, cucurbit, group 9	0.05
* * * * *	
Vegetable, fruiting, group 8	0.05
Vegetable, legume, edible podded, subgroup 6A	0.05
* * * * *	
Wheat, forage	0.50
Wheat, grain	1.1
Wheat, hay	3.5
Wheat, straw	50

* * * * *

[FR Doc. E6–14642 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2005–0059; FRL–7752–8]

RIN 2070–AC61

TSCA Inventory Update Reporting Rule; Electronic Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations to allow the electronic submission of information and to make several minor corrections. For the first time, in 2006, reporters of IUR data will be able to use the Internet, through EPA's Central Data Exchange (CDX), to submit information on their chemicals to EPA. In addition, EPA will continue to allow IUR submissions either on CD ROM or on paper. EPA is also correcting two paragraph cross-references and a section heading. Additionally, EPA is clarifying requirements for the reporting of company identification information.

DATES: This direct final rule is effective on November 6, 2006 without further notice, unless EPA receives adverse comment by October 6, 2006. If, however, EPA receives adverse comment, EPA will publish a **Federal Register** document to withdraw the portion of the rule that relates to the specific comment that was made before the effective date of the direct final rule. The remainder of the rule will become effective on November 6, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0059, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention

and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2005–0059. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0059. EPA's policy is that all comments received will be included in the public docket without change and may be made available in the on-line docket at*http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 the on-line docket at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. 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 the EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Susan Sharkey, Project Manager, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8789; e-mail address: *sharkey.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) chemical substances, including inorganic chemical substances, subject to reporting under the Inventory Update Reporting (IUR) regulations at 40 CFR part 710. Any use of the term "manufacture" in this document will encompass import, unless otherwise stated.

Potentially affected entities may include, but are not limited to: Chemical manufacturers and importers subject to IUR reporting, including chemical manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives, and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is the Agency's Authority for Taking this Action?

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and

keep current an inventory of chemical substances manufactured or processed in the United States. This inventory is known as the TSCA Chemical Substances Inventory (the TSCA Inventory). In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances in commerce at that time. In 1986, EPA promulgated the initial IUR rule under TSCA section 8(a) at 40 CFR part 710 (51 FR 21438, June 12, 1986) to facilitate the periodic updating of the TSCA Inventory and to support activities associated with the implementation of TSCA. In 2003, EPA promulgated extensive amendments to the IUR rule (68 FR 848, January 7, 2003) (FRL–6767–4) (2003 Amendments) to collect manufacturing, processing, and use exposure-related information, and to make certain other changes. Minor corrections to the IUR rule were made in July of 2004 (69 FR 40787, July 7, 2004) (FRL–7332–3), and additional revisions to the IUR rule were made on December 19, 2005 (70 FR 75059) (FRL–7743–9).

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers and processors of chemical substances and mixtures (referred to hereinafter as chemical substances) must maintain such records and submit such information as the Administrator may reasonably require. TSCA section 8(a) generally excludes small manufacturers and processors of chemical substances from the reporting requirements established in TSCA section 8(a). However, EPA is authorized by TSCA section 8(a)(3) to require TSCA section 8(a) reporting from small manufacturers and processors with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or that is the subject of an order under TSCA section 5(e), or that is the subject of relief that has been granted pursuant to a civil action under TSCA section 5 or 7. Pursuant to TSCA section 8(a)(3)(B), the standard for determining whether an entity qualifies as a small manufacturer for purposes of 40 CFR part 710 generally is defined in 40 CFR 704.3. Processors are not currently subject to the regulations at 40 CFR part 710.

B. What is the Inventory Update Reporting (IUR) Regulation?

The data reported under the IUR rule are used to update the information maintained on the TSCA Inventory. EPA uses the TSCA Inventory and data reported under the IUR rule to support many TSCA-related activities and to provide overall support for a number of EPA and other federal health, safety, and environmental protection activities. The IUR rule, as amended by the 2003 Amendments and subsequent revisions, requires U.S. manufacturers (including importers) of chemicals listed on the TSCA Inventory to report to EPA every 5 years the identity of chemical substances manufactured for a commercial purpose during the reporting year in quantities of 25,000 pounds or more at any single site they own or control. The IUR generally excludes several categories of substances from its reporting requirements, i.e., polymers, microorganisms, naturally occurring chemical substances, and certain natural gas substances. Sites are required to report information such as company name, site location and other identifying information, identity and production volume of the reportable chemical substance, manufacturing exposure-related information associated with each reportable chemical substance, including the physical form and maximum concentration of the chemical substance and the number of potentially exposed workers.

Manufacturers (including importers) of larger volume chemicals (i.e., 300,000 pounds or more manufactured during the reporting year at any site) are additionally required to report certain processing and use information (40 CFR 710.52(c)(4)). This information includes process or use category, NAICS code, industrial function category, percent production volume associated with each process or use category, number of use sites, number of potentially exposed workers, and consumer/commercial information such as use category, use in or on products intended for use by children, and maximum concentration. For the 2006 submission period, inorganic chemicals are partially exempt regardless of production volume (i.e., submitters do not report the processing and use information listed in 40 CFR 710.52(c)(4)). After the 2006 reporting period, the partial exemption for inorganic chemicals will no longer be applicable and submitters will report processing and use information on inorganic chemical substances manufactured (including imported) at a site in volumes of 300,000 pounds or more, unless partially exempted as described in Unit II.C. In addition, specifically listed petroleum process streams and other specifically listed chemical substances are partially exempt during the 2006 submission period as well as during subsequent submission periods.

C. What Action is the Agency Taking?

Through this action, EPA is amending the methods available for obtaining documents, including reporting instructions, and for submitting reports. Additionally, EPA is making several minor corrections, including clarifying requirements for the reporting of company identification information.

1. *Methods to obtain reporting instructions and submit reports.* Because IUR reporting occurs only once every 5 years, the methods used to make available or otherwise distribute reporting materials, and for submitting the required information to EPA, often change from one submission period to another. EPA is therefore providing instructions to obtain the most up-to-date information concerning IUR submissions.

For the 2006 submission period, EPA is allowing submissions, including those containing CBI, over the Internet using EPA's Central Data Exchange (CDX). Submitting IUR information through CDX is EPA's preferred submission method because this method enables EPA to notify the submitter that the Agency has received their submission, it reduces reporting errors, and it enables data to be available more quickly. Coupled with EPA's new reporting software, eIUR, the Agency believes electronic reporting will become the preferred method of reporting for industry as well as for EPA.

The reporting form, reporting software, instruction manual, and other guidance materials are available on EPA's website at *www.epa.gov/oppt/iur* or through EPA's hotline, and can be obtained as described in the regulatory text. EPA plans to continue to notify sites that submitted during the previous submission period of the advent of the next submission period. The notification will include information on how to obtain the documents described in this paragraph.

Although EPA prefers that submissions be made using CDX, the Agency will continue to accept submissions on CD ROM or in hard copy. Instructions for submitting IUR information in these formats are also included on the website and in the instructions manual.

2. *Corrections.* Section 710.52 describes the information to be reported by persons described in § 710.48. EPA is correcting two of the cross-references in this section. Section 710.57 describes recordkeeping requirements. EPA is correcting the title for this section. These changes are purely administrative, make the relevant

regulatory provision internally consistent and correct, and do not have any substantive effect on any other part of the regulations at 40 CFR part 710.

a. Section 710.52(c)(4)(i)(F) states that:

[f]or each combination of industrial processing or use operation, NAICS code and industrial function category, the submitter must estimate the number of workers reasonably likely to be exposed to each reportable chemical substance. For each combination associated with each substance, the submitter must select from among the worker ranges listed in paragraph (c)(3)(vi) of this section and report the corresponding code (i.e., W1 though W8).

The reference to paragraph (c)(3)(vi) is incorrect as that paragraph does not contain worker ranges. Instead, the appropriate cross reference is to paragraph (c)(3)(v). As a result, EPA is correcting § 710.52(c)(4)(i)(F) by changing the cross-reference to the worker ranges from "paragraph (c)(3)(vi)" to "paragraph (c)(3)(v)."

b. Section 710.52(c)(4)(ii)(D) states that:

[w]here the reportable chemical substance is used in commercial or consumer products, the estimated typical maximum concentration, measured by weight, of the chemical substance in each commercial and consumer product category reported under paragraph (c)(4)(ii)(A) of this section. For each substance in each commercial and consumer product category reported under paragraph (c)(4)(ii)(A) of this section, submitters must select from among the ranges of concentrations listed in the table in paragraph (c)(3)(vii) of this section and report the corresponding code (i.e., M1 through M5).

The reference to paragraph (c)(3)(vii) is incorrect as that paragraph does not contain ranges of concentrations. Instead, the appropriatecross-reference is to paragraph (c)(3)(vi). As a result, EPA is correcting § 710.52(c)(4)(ii)(D) by changing the cross-reference to the ranges of concentrations from "paragraph (c)(3)(vii)" to "paragraph (c)(3)(vi)."

c. Section 710.57 is titled "Reporting requirements" and states that "[e]ach person who is subject to the reporting requirements of this subpart must retain records that document any information reported to EPA." Because the subject of this section is recordkeeping requirements, EPA is correcting the section by changing the heading from "Reporting requirements" to "Recordkeeping requirements."

3. *Clarification.* Section 710.52(c)(2)(i) states that:

[t]he name of a person who will serve as technical contact for the submitter company and who will be able to answer questions about the information submitted by the company to EPA, the parent company name and Dun and Bradstreet Number, the contact person's full mailing address, the contact person's telephone number, and the contact person's e-mail address must be reported for each site at which at least 25,000 lbs. (11,340 kg) of a reportable chemical substance is manufactured (including imported).

The use of the term "parent company" has created confusion, and therefore EPA is clarifying this requirement by changing the phrase"parent company" to "company." Submitters are to report the company name associated with the manufacturing (including importing) site and do not need to identify a parent company, if any, that would be associated with the company that reports information under this rule.

III. Direct Final Rule Procedures

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. This final rule will be effective on November 6, 2006 without further notice unless the Agency receives adverse comment by October 6, 2006. If EPA receives adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, the Agency will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph, or section of today's rulemaking for which the Agency does not receive adverse comment will become effective on November 6, 2006, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule. For any distinct amendment, paragraph, or section of today's rule that is withdrawn due to adverse comment, EPA will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. The Agency will address the comments on any such distinct amendment, paragraph, or section as part of that proposed rulemaking.

IV. Materials in the Rulemaking Record

The public version of the official record for this rulemaking is contained in three separate dockets that can be accessed as described in the**ADDRESSES** unit. Docket ID number EPA–HQ–OPPT–2005–0059 contains the rulemaking record. This record includes the documents located in the docket.

1. USEPA. "Instructions for Reporting for the 2006 Partial Updating of the TSCA Chemical Inventory Database," Draft. May 2006.

2. USEPA. "News About: The 2006 IUR Rule...change for easier, more accurate filing," November 2005.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

This direct final rule implements one change and several minor corrections to 40 CFR part 710, resulting in a burden and cost reduction. Since this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

This direct final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Since this action makes one change, several minor corrections, and a clarification to 40 CFR part 710, resulting in a burden reduction, EPA certifies this action will not have a significant economic impact on a substantial number of small entities. There will be no adverse impact on small entities resulting from this action.

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).

E. Executive Order 3132

The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This

action does not alter the relationships or distribution of power and responsibilities established by Congress.

F. Executive Order 13175

The Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This direct final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

This action does not require OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

H. Executive Order 13211

Because this direct final rule is exempt from review under Executive Order 12866 due to its lack of significance, this direct final rule 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).

I. National Technology Transfer Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 710

Environmental protection, Central Data Exchange, CDX, Chemicals, Electronic reporting, Hazardous materials, Reporting and recordkeeping requirements.

Dated: August 25, 2006.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 710.52 [Amended]

■ 2. Section 710.52 is amended as follows:

a. By revising the phrase "parent company" to read "company" in paragraph (c)(2)(i).

b. By revising the phrase "paragraph (c)(3)(vi)" to read "paragraph (c)(3)(v)" in paragraph (c)(4)(i)(F).

c. By revising the phrase "paragraph (c)(3)(vii)" to read "paragraph (c)(3)(vi)" in paragraph (c)(4)(ii)(D).

§ 710.57 [Amended]

■ 3. Section 710.57 is amended by revising the section heading to read:

"§ 710.57 Recordkeeping requirements."

■ 4. Section 710.59 is revised to read as follows:

§ 710.59 Availability of reporting form and instructions.

(a) *Use the proper EPA form.* You must use the EPA form identified as "Form U" to submit written information in response to the requirements of this subpart. Instructions for obtaining copies of Form U are in paragraph (c) of this section.

(b) *Follow the reporting instructions.* You should follow the detailed instructions for completing and submitting an electronic or hard copy report. Instructions given in the EPA publication titled, "Instructions for Reporting for the 2006 Partial Updating of the TSCA Chemical Inventory Database," are available as described in paragraph (c) of this section. EPA encourages reporting sites subject to this part to submit the required information to EPA electronically.

(c) *Obtain the reporting package and copies of the form.* You can obtain the reporting form or software, reporting instructions, and other associated documents as follows:

(1) *By website.* Go to the EPA Inventory Update Reporting Internet home page at *http://www.epa.gov/oppt/iur* and follow the appropriate links. EPA encourages reporting sites subject to this subpart to visit this home page.

(2) *By phone.* Call the EPA TSCA Hotline at (202) 554–1404.

(3) *By e-mail.* Send an e-mail request for this information to the EPA TSCA Hotline at *TSCA-Hotline@epa.gov.*

(4) *By mail.* Send a written request for this information to the following address: TSCA Hotline, Mail Code 7408M, ATTN: Inventory Update Reporting, Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

[FR Doc. E6–14716 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–76

[FMR Amendment 2005–03; FMR Case 2005–102–8]

Federal Management Regulation; Real Property Policies Update; Technical Amendment

AGENCY: Office of Governmentwide Policy, General Services Administration.

ACTION: Final rule.

SUMMARY: This document amends the Federal Management Regulation (FMR) to extend the implementation date of the Real Property Policies section entitled "What standards must facilities subject to the Architectural Barriers Act meet?," which was published in the **Federal Register**, at 70 FR 67846, on November 8, 2005. The implementation date of the section previously was extended to August 7, 2006, but only with respect to leasing actions. The implementation date of the section, currently August 7, 2006, is hereby further extended to February 6, 2007, but only for leasing actions (other than those where the Government expressly requires new construction to meet its needs) where solicitations have not been issued by February 6, 2007. The May 8, 2006, implementation date remains

unchanged with respect to Federal construction or alteration projects. The August 7, 2006, implementation date remains unchanged with respect to lease projects where new construction is required by the Government to meet its needs. Except as expressly modified by this final rule, all other terms and conditions of the Architectural Barriers Act standards remain in full force and effect.

DATES: Effective Date: September 6, 2006.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GSA Building, 1800 F Street, N.W., Washington, DC 20405, (202)501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Stanley C. Langfeld, Director, Regulations Management Division, Office of Governmentwide Policy, General Services Administration, at (202) 501–1737, or by e-mail at *Stanley.langfeld@gsa.gov*. Please cite FMR Case 2005–102–8, Amendment 2005–03, Technical Amendment.1

List of Subjects in 41 CFR Part 102–76

Federal buildings and facilities.

Dated: August 21, 2006.

Lurita Doan,

Administrator of General Services

■ For the reasons set forth in the preamble, GSA amends 41 CFR chapter 102 as set forth below:

PART 102–76—DESIGN AND CONSTRUCTION

■ 1. The authority citation for 41 CFR part 102–76 continues to read as follows:

Authority: Authority: 40 U.S.C. 121(c); (in furtherance of the Administrator's authorities under 40 U.S.C. 3301–3315 and elsewhere as included under 40 U.S.C. 581 and 583; E.O. 12411, 48 FR 13391, 3 CFR, 1983 Comp., p. 155; E.O. 12512, 50 FR 18453, 3 CFR, 1985 Comp., p. 340).

■ 2. Amend section 102–76.65 by revising paragraph (a) to read as follows:

§ 102–76.65 What standards must facilities subject to the Architectural Barrier Act meet?

(a) GSA adopts Appendices C and D to 36 CFR part 1191 (ABA Chapters 1 and 2, and Chapters 3 through 10) as the Architectural Barriers Act Accessibility Standard (ABAAS). Facilities subject to the Architectural Barriers Act (other than facilities in 102–76.65(b) and (c)) must comply with ABAAS as set forth below:

(1) For construction or alteration of Federally-owned facilities, compliance with ABAAS is required if the construction or alteration commenced after May 8, 2006. If the construction or alteration of a Federally-owned facility commenced on or before May 8, 2006, compliance with the Uniform Federal Accessibility Standards (UFAS) is required.

(2) For Federal lease-construction actions subject to the Architectural Barriers Act, where the Government expressly requires new construction to meet its needs, compliance with ABAAS is required for all such leases awarded on or after June 30, 2006. UFAS compliance is required for all such leases awarded before June 30, 2006.

(3) For all other lease actions subject to the Architectural Barriers Act (other than those described in paragraph (a)(2) of this section), compliance with ABAAS is required for all such leases awarded pursuant to solicitations issued after February 6, 2007. UFAS compliance is required for all such leases awarded pursuant to solicitations issued on or before February 6, 2007.

* * * * *

[FR Doc. E6–14727 Filed 9–5–06; 8:45 am]

BILLING CODE 6820–RH–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051209329–6046–02; I.D. 082806A]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Quarter III Fishery for Loligo Squid

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

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the Exclusive Economic Zone (EEZ) will be closed effective 0001 hours, September 2, 2006. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* squid per trip for the remainder of the quarter (through September 30, 2006). This action is necessary to prevent the fishery from exceeding its Quarter III quota and to allow for effective management of this stock.

DATES: Effective 0001 hours, September 02, 2006, through 2400 hours, September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fishery Management Specialist, 978–281–9221, Fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Regulations governing the Loligo squid fishery are found at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The 2006 specification of DAH for *Loligo* squid was set at 16,872.4 mt (71 FR 10621, March 2, 2006). This amount is allocated by quarter, as shown below.

TABLE. 1 *Loligo* SQUID QUARTERLY ALLOCATIONS.

Quarter	Percent	Metric Tons[1]	Research Set-aside
I (Jan–Mar)	33.23	5,606.70	N/A
II (Apr–Jun)	17.61	2,971.30	N/A
III (Jul–Sep)	17.3	2,918.90	N/A
IV (Oct–Dec)	31.86	5,375.60	N/A
Total	100	16,872.50	127.5

[1]Quarterly allocations after 127.5 mt research set-aside deduction.

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 80 percent of the quarterly allocation is harvested in Quarters I, II, and III, and when 95 percent of the total annual DAH has been harvested. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. The Administrator, Northeast Region, NMFS, based on dealer reports and other available information, has determined that 80 percent of the DAH for *Loligo* squid in Quarter III will be harvested. Therefore, effective 0001 hours, September 2, 2006, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1,134 kg) of *Loligo* during a

calendar day. The directed fishery will reopen effective 0001 hours, October 1, 2006, when the Quarter IV quota becomes available.

Classification

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

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

Dated: August 29, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–7427 Filed 8–30–06; 3:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 082906D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 72 hours. This action is necessary to fully use the C season allowance of the 2006 total allowable catch (TAC) of pollock specified for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 31, 2006, through 1200 hrs, A.l.t., September 3, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on August 28, 2006 (71 FR 51532, August 30, 2006).

NMFS has determined that approximately 6,500 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2006 TAC of pollock in Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 72 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA effective 1200 hrs, A.l.t., September 3, 2006. After the effective date of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 28, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 30, 2006.

James P. Burgess,

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

[FR Doc. 06–7425 Filed 8–30–06; 3:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044–6044–01; I.D. 082906C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA) for 72 hours. This action is necessary to fully use the C season allowance of the 2006 total allowable catch (TAC) of pollock specified for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 31, 2006, through 1200 hrs, A.l.t., September 3, 2006.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 620 of the GOA under § 679.20(d)(1)(iii) on August 28, 2006, it will publish August 31, 2006.

NMFS has determined that approximately 2,900 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2006 TAC of pollock in Statistical Area 620, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 620 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 72 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the

GOA effective 1200 hrs; A.l.t., September 3, 2006. After the effective date of this closure, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 29, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.25 and § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 30, 2006.

James P. Burgess,

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

[FR Doc. 06–7428 Filed 8–30–06; 3:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 083006D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2006 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 31, 2006, through 2400 hrs, A.l.t., December 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI is 1,434 metric tons as established by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

In accordance with § 679.21(e)(7)(v), the Acting Administrator, Alaska Region, NMFS, has determined that the 2006 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 30, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 30, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–7447 Filed 8–31–06; 1:53 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 172
Wednesday, September 6, 2006

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A74, et al.; DA–06–01]

Milk in the Northeast and Other Marketing Areas; Reconvening of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of reconvened public hearing on proposed rulemaking.

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A74
1005	Appalachian	AO–388–A18
1006	Florida	AO–356–A39
1007	Southeast	AO–366–A47
1030	Upper Midwest	AO–361–A40
1032	Central	AO–313–A49
1033	Mideast	AO–166–A73
1124	Pacific Northwest.	AO–368–A35
1126	Southwest	AO–231–A68
1131	Arizona	AO–271–A40

SUMMARY: This notice announces the reconvening of the public hearing that began on January 24, 2006, in Alexandria, Virginia, to consider proposals seeking to amend the Class III and Class IV milk price formula manufacturing allowances applicable to all Federal milk marketing orders.

DATES: The hearing will convene at 8:30 a.m. on September 14, 2006.

ADDRESSES: The hearing will be held at the Holiday Inn Select, 15471 Royalton Road, Strongsville, Ohio 44136, (440) 238–8800.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Assistant Market Administrator, at (330) 225–4752; e-mail address: *phuber@fmmaclev.com* before the hearing begins. *Prior documents in this proceeding:*

Notice of Hearing: Issued December 30, 2005; published January 5, 2006 (71 FR 545).

Notice of Intent to Reconvene Hearing: Issued June 23, 2006; published June 28, 2006 (71 FR 36715).

SUPPLEMENTARY INFORMATION: The purpose of reconvening this proceeding is to assure that any changes to manufacturing allowance factors used in Federal order Class III and Class IV product price formulas are appropriate and reflective of manufacturing costs. Specifically, the reconvened hearing will take into evidence *only* data on plant manufacturing costs compiled by Cornell University and any other pertinent data or information specifically addressing plant manufacturing costs that would be publicly available. Other factors contained in the Class III and Class IV price formulas will not be addressed at the reconvened hearing.

The Department has solicited and is currently receiving additional proposals regarding the Class III and Class IV price formulas. These proposals will be considered for inclusion in a separate hearing notice for a separate public hearing on all issues affecting Class III and Class IV product price formulas.

Notice is hereby given that the public hearing which was adjourned in Alexandria, Virginia, on Friday, January 27, 2006, by the Administrative Law Judge designated to hold said hearing and preside thereof, will reconvene in session at 8:30 a.m., September 14, 2006, at the Holiday Inn Select, Strongsville, Ohio.

At the reconvened hearing, additional testimony will be received on Proposals 1 and 2, listed in the hearing notice (71 FR 545) to the tentative marketing agreements and to the orders regulating the handling of milk in all Federal milk marketing orders.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

Authority: 7 U.S.C. 601–674, and 7253.

Dated: August 31, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–7476 Filed 9–1–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25673; Airspace Docket No. 06–ASW–13]

RIN 2120–AA66

Proposed Modification of VOR Federal Airway V–2; East Central United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify VOR Federal Airway V–2 over the East Central United States to support modified arrival and departure procedures to the Detroit Metropolitan Wayne County Airport (DTW), Detroit, Michigan. These procedures were modified in conjunction with the Midwest AirSpace Enhancement (MASE) project. The FAA is proposing this action to enhance safety and to improve the efficient use of the navigable airspace assigned to the Chicago and Cleveland Air Route Traffic Control Centers (ARTCC).

DATES: Comments must be received on or before October 23, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2006–25673 and Airspace Docket No. 06–ASW–13, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules,

Office of System Operations Airspace and Aeronautical Information Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2006–25673 and Airspace Docket No. 06–ASW–13) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2006–25673 and Airspace Docket No. 06–ASW–13." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Blvd; Fort Worth, TX 76193–0500.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In April of 1996, the FAA Administrator announced that the FAA would begin a comprehensive review and redesign of United States airspace. This endeavor became known as the National Airspace Redesign, now referred to as Airspace Management Program (AMP). The goal of AMP is to maintain and improve safety; improve efficiency; reduce delays; increase system flexibility, predictability, and access; and support the evolution of emerging technologies. The MASE project is the culmination of the AMP process with regard to aircraft operations in the Cleveland and Detroit terminal areas as well as in the high altitude, en route airspace environment. The purpose of MASE is to develop and implement new en route and terminal airspace procedures that would increase efficiency and enhance safety of aircraft movements in the airspace overlying and beyond the Cleveland and Detroit terminal areas. Specifically, the MASE project consists of changes to routes, fixes, altitudes, and holding patterns, as well as the development of new procedures and routes.

In support of the MASE project, FAA published an NPRM on June 16, 2006 (71 FR 34854) proposing to establish 16 VOR Federal Airways (V–65, V–176, V–383, V–396, V–406, V–410, V–414, V–416, V–418, V–426, V–467, V–486, V–542, V–584, V–586, and V–609); modify 13 VOR Federal Airways (V–14, V–26, V–40, V–72, V–75, V–90, V–96, V–103, V–116, V–133, V–297, V–435, and V–526); and revoke one VOR Federal Airway (V–42) over the East Central United States. This action proposes to modify VOR Federal Airway V–2 over the East Central United States to support the modified arrival and departure procedures to DTW that were proposed as a part of the MASE project.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 to modify VOR Federal Airway V–2 over the East Central United States. The purpose of this action is to support arrival and departure procedures to DTW that were modified in conjunction with MASE. Further, the FAA is proposing this action to enhance safety and to improve the efficient use of the navigable airspace within the areas of responsibility for Chicago and Cleveland ARTCCs.

VOR Federal Airways are published in paragraph 6010 of FAA Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The VOR Federal Airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 6010 VOR Federal Airways

* * * * *

V–2 [Revised]

From Seattle, WA; Ellensburg, WA; Moses Lake, WA; Spokane, WA; Mullan Pass, ID; Missoula, MT; Helena, MT; INT Helena 119° and Livingston, MT, 322° radials; Livingston; Billings, MT; Miles City, MT; 24 miles, 90 miles, 55 MSL, Dickinson, ND; 10 miles, 60 miles, 38 MSL, Bismarck, ND; 14 miles, 62 miles, 34 MSL, Jamestown, ND; Fargo, ND; Alexandria, MN; Gopher, MN; Nodine, MN; Lone Rock, WI; Madison, WI; Badger, WI; Muskegon, MI; Lansing, MI; Salem, MI; INT Salem 082° (085°M) and Aylmer, ON, Canada, 261° (269°M) radials; Aylmer; INT Aylmer 086° and Buffalo, NY, 259° radials; Buffalo; Rochester, NY; Syracuse, NY; Utica, NY; Albany, NY; INT Albany 084° and Gardner, MA, 284° radials; to Gardner. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on August 28, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6–14744 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0436; FRL–8214–3]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Ford Motor Company Adjusted Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a January 4, 2006, request from Illinois for a site specific revision to the State Implementation Plan (SIP) for the Ford Motor Company (Ford). The revision will allow Ford to discontinue use of its Stage II vapor recovery system (Stage II) at its Chicago Assembly Plant. In place of Stage II, Ford will comply with the standards of the Federal onboard refueling vapor recovery (ORVR) regulations, as well as meet other minor conditions. The exclusive use of ORVR will provide at least an equivalent amount of gasoline vapor capture as Stage II.

DATES: Comments must be received on or before October 6, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0436, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Julie Henning, Environmental Protection Specialist, State and Tribal Planning Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–4882, *henning.julie@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register.**

Dated: August 17, 2006.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. E6–14544 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 195

[Docket No. PHMSA–2003–15864; Notice 3]

RIN 2137–AD98

Pipeline Safety: Protecting Unusually Sensitive Areas From Rural Onshore Hazardous Liquid Gathering Lines and Low-Stress Lines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to extend pipeline safety regulations to rural onshore hazardous liquid gathering lines and low-stress lines within a defined buffer of previously defined "unusually sensitive areas." These are non-populated areas requiring extra protection because of the presence of sole source drinking water resources, endangered species, or other ecological resources.

This proposal will define "regulated rural onshore gathering lines" and "regulated rural onshore low-stress lines" and require operators of the lines to comply with certain safety requirements. These proposed safety requirements will address the most common threats to the integrity of these rural lines: corrosion and third-party damage. This proposal is intended to provide additional integrity protection for unusually sensitive areas that could be affected by these lines and improve public confidence in the safety of hazardous liquid rural onshore gathering and low-stress lines.

DATES: Persons interested in submitting written comments on the rules proposed in this document must do so by November 6, 2006. PHMSA will consider late filed comments so far as practicable.

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

- *Mail:* Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Anyone wanting confirmation of mailed comments must include a self-addressed stamped postcard.
- *Hand delivery or courier:* Room PL–401, 400 Seventh Street, SW., Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.
- *Web site:* Go to *http://dms.dot.gov*, click on "Comments/Submissions" and follow instructions at the site. Alternatively, go to *http://regulations.gov*.

All written comments should identify the docket number and notice number stated in the heading of this notice.

Docket access. For copies of this notice or other material in the docket, you may contact the Dockets Facility by phone (202–366–9329) or go to the hand delivery address. For Web access to the docket to read and download filed material, go to *http://dms.dot.gov/search*. Then type in the last five digits of the docket number shown in the heading of this notice, and click on "Search."

Anyone can search the electronic form of all comments filed in any of DOT's dockets by the name of the individual filing the comment (or signing the comment, if filed for an entity such as an association, business, or labor union). You may review DOT's complete Privacy Act Statement in the April 11, 2000 issue of the **Federal Register** (65 FR 19477) or go to *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: DeWitt Burdeaux by phone at 405–954–7220 or by e-mail at *Dewitt.Burdeaux@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

a. History

Over the past six years, PHMSA has designed and executed a risk-based system approach to oversight of the national pipeline infrastructure. This approach is embodied in the "Integrity Management Program" of the agency and its budget. The program has many elements, including the data that supports the agency's decision making, regulatory framework, enforcement program, training and preparation of Federal and State inspectors, research and development to advance integrity assessment and management, and performance measurement and reporting. We have sought advice on each aspect of the program at the conceptual stage from our technical advisory committee members and in public meetings.

As to regulatory framework, we undertook rulemaking projects on a risk-prioritized basis, acting first on those parts of the infrastructure that posed the greatest risk to people and the environment. To begin the program, we defined high consequence areas and mapped the locations on the National Pipeline Mapping System, including areas unusually sensitive to environmental damage, which we previously defined in our 2000 regulation. Since 2000, we have completed and implemented regulations that provided integrity management protections for people and the environment that could be affected by a failure from high pressure, large and small hazardous liquid pipelines and provided protections to people that could be affected by high pressure gas transmission pipelines. We recently completed our gas gathering lines regulation by taking an integrity-related approach to protecting people from gas gathering lines. We began consideration of the current regulatory initiative in 2003 and discussed it during our technical advisory committee meetings, and at public meetings in 2004. This is the remaining element in the regulatory framework designed to protect unusually sensitive areas from hazardous liquid pipelines in rural areas.

b. PHMSA's Safety Rules for Hazardous Liquid Pipelines Exempt Rural Low-Stress Lines and Gathering Lines

Low-stress lines generally transport hazardous liquid at low-stress levels for relatively short distances to and from refineries and terminals, while gathering lines transport petroleum products from production facilities to downstream locations, such as a refinery or processing plant.

PHMSA's safety rules for hazardous liquid pipelines (49 CFR part 195) apply to both offshore and onshore gathering and low-stress lines. PHMSA currently regulates gathering lines in populated areas, and those in rural areas in the inlets of the Gulf of Mexico. PHMSA also regulates low-stress lines that are located in populated areas or cross commercially navigable waterways. It also regulates any low-stress line transporting highly volatile liquids. These lines are subject to all of the regulatory requirements in part 195.

This proposal impacts some of the onshore rural gathering lines and low-stress lines that PHMSA currently exempts from all or portions of the part 195 regulatory requirements. Onshore gathering lines in rural areas are exempt from all part 195 rules except requirements for inspection and burial in Gulf of Mexico inlets (§ 195.1(b)(4)). Part 195 defines "gathering line" as a pipeline 8⅝ inches or less in nominal outside diameter that transports petroleum from a production facility. The term "production facility" is defined as piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation, or treating of petroleum or carbon dioxide, and associated storage or measurement. To qualify, piping or equipment must be used to extract petroleum or carbon dioxide from the ground or facilities where petroleum or carbon dioxide is produced and prepared for transportation by pipeline. This includes piping between treatment plants that extract carbon dioxide and facilities used for the injection of carbon dioxide for recovery operations. The term "petroleum" means crude oil, condensate, natural gasoline, natural gas liquids, and liquefied petroleum gas. Also, "rural area" means outside the limits of any incorporated or unincorporated city, town, village, or any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development.

Part 195 defines "low-stress" as a hazardous liquid pipeline operated in its entirety at a stress level of 20 percent or less of the specified minimum yield strength (SMYS) of the line pipe. SMYS is the minimum yield strength, expressed in p.s.i. (kPa) gage, prescribed by the specification under which the material is purchased from the manufacturer. Low-stress lines in rural areas are exempt from part 195 if they transport nonvolatile petroleum products and are located outside a waterway currently used for commercial navigation. Under this proposal, some of these rural lines will no longer be exempt if within a defined buffer zone of an unusually sensitive area. This proposal will not affect other exempt low-stress lines, specifically pipelines subject to safety regulations of the U.S. Coast Guard, or those pipelines that serve certain refining and terminal facilities, if the pipeline is less than 1-mile long (measured outside of facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation.

c. Statutory Authority

Except for a 1991 requirement establishing inspection and burial rules for pipelines, including rural gathering

lines, located in Gulf of Mexico inlets, from 1979 until 1992, PHMSA did not have statutory authority to regulate rural gathering lines.[1] It was not until the Pipeline Safety Act of 1992 (codified at 49 U.S.C. 60101(a)(22)), that Congress gave DOT authority to regulate certain rural gathering lines. This legislation directed DOT to define the term "gathering line" by October 24, 1994, and the term "regulated gathering line" by October 24, 1995 (49 U.S.C. 60101(b)(1)(A) and (b)(2)(A)).

Four years later, in the Accountable Pipeline Safety and Partnership Act of 1996 (Pub. L. 104–304), Congress moderated its directive to define "regulated gathering line" by adding the words "if appropriate" (49 U.S.C. 60101(b)(2)(A)). Congress also gave DOT specific authority to collect information from gathering line operators related to deciding whether and to what extent to regulate rural gathering lines (49 U.S.C. 60117(b)). Because of the need to regulate the safety of certain rural petroleum gathering lines (as explained in section II of this preamble), we think it is now appropriate to define the term "regulated gathering line" for hazardous liquid transportation.

In defining "regulated gathering line" for hazardous liquid transportation, PHMSA is required by statute to consider various physical characteristics to decide which rural onshore gathering lines need safety regulation. These characteristics include location, length of line from the well site, operating pressure, throughput, and composition of the transported hazardous liquid (49 U.S.C. 60101(b)(2)(A) and (b)(2)(B)(i)). Further, the statute states a "regulated gathering line" may not include "a crude oil [petroleum] gathering line that has a nominal diameter of not more than 6 inches, is operated at low pressure, and is located in a rural area that is not unusually sensitive to environmental damage" (49 U.S.C. 60101(b)(2)(B)(ii)).[2] In other words, in rural areas unusually sensitive to environmental damage, PHMSA may regulate petroleum gathering lines of any diameter or operating pressure. But in other rural areas, PHMSA may not regulate petroleum gathering lines 6 inches or less in nominal diameter operating at a low pressure. Congress did not define "low pressure" or areas "unusually sensitive to environmental damage." PHMSA, however, has defined "unusually sensitive areas" in §§ 195.2 and 195.6, and low-stress hazardous liquid pipeline in § 195.2, as discussed above. PHMSA considers a low pressure pipeline synonymous to a low-stress pipeline.

PHMSA has statutory authority under 49 U.S.C. 60102 to prescribe regulations that provide adequate protection against risks to life and property posed by pipeline transportation. This statute requires PHMSA to develop practicable standards designed to ensure hazardous liquids are safely transported by pipeline of any stress level, and to protect people and the environment. PHMSA's authority (49 U.S.C. 60102(k)) specifically prohibits it from excepting from regulation a hazardous liquid pipeline facility only because the facility operates at low internal stress.

d. Public Participates in Decision Making

1. Meetings

In 2003, PHMSA invited the public to discuss oil and gas gathering line issues at meetings in Austin, Texas (68 FR 62555; Nov. 5, 2003) and Anchorage, Alaska (68 FR 67129; Dec. 1, 2003). The meetings gave people an opportunity to comment on what might make regulating the safety of rural gathering lines appropriate, and what the safety rules should be. State pipeline safety agencies also actively participated in these meetings. Transcripts of both meetings are in the docket (PHMSA–2003–15864–2 and 3).

Following the two public meetings, PHMSA published a notice to clarify its plans about regulating rural gathering lines (69 FR 5305; Feb. 4, 2004). In the notice, PHMSA sought comments on a suitable approach to identifying gathering lines it should regulate.

PHMSA held a public workshop to discuss the need to regulate rural low-stress lines on June 26, 2006, in Alexandria, Virginia. This meeting is discussed further in section C.3. of this document.

2. Comments Addressing Rural Gathering Lines

Because of the public meetings and clarification notice, PHMSA received several comments on regulating rural gathering lines. Next is a summary of the significant comments.

The Association of Oil Pipelines (AOPL), a trade association representing operators of hazardous liquid pipelines, stated gathering lines usually are in areas of little population and operate at low pressures. It said most releases are due to small corrosion leaks and operators repair the leaks quickly. AOPL found that 67 percent of these hazardous liquid leaks resulted in spills of less than five barrels. Thus, AOPL said, releases were unlikely to have serious public safety or environmental consequences. Nevertheless, in recognition of Congress' safety concerns, AOPL said it would support limited pipeline safety regulation of certain higher-risk rural gathering lines as a reasonable balance between costs and risk. It said comprehensive regulation could cause oil producers to shut in marginally profitable wells or switch to riskier truck transport.

AOPL put forward a regulatory plan for rural crude oil gathering lines. The plan covers any line 6 inches or more in nominal diameter operating at a hoop stress of more than 20 percent of SMYS if the line could affect a high consequence area. AOPL said operators should have discretion in selecting a method to identify which gathering lines could affect high consequence areas. (Section 195.450 defines a "high consequence area" as a commercially navigable waterway, an area of high or concentrated population, or an unusually sensitive area. And § 195.6 defines "unusually sensitive area" as a drinking water or ecological resource unusually sensitive to environmental damage from a hazardous liquid pipeline release. Both sections contain subordinate definitions that further explain the meaning of "high consequence area" and "unusually sensitive area.")

AOPL's plan recommended certain safety regulations it thought would be suitable for higher-risk rural gathering lines. AOPL's plan includes the corrosion control rules in subpart H of part 195. In addition, to address excavation damage, AOPL's plan includes the public education rules in § 195.440 and the damage prevention program rules in § 195.442. Finally, the plan includes the accident and safety-related condition reporting rules in subpart B of part 195.

AOPL also suggested PHMSA regulate nonrural gathering lines in locations with rural characteristics in the same manner as rural gathering lines. Although AOPL did not offer a method to identify these lines, the most likely method would be a population density survey. Part 195 does not require operators of nonrural gathering lines to conduct population density surveys. Thus, PHMSA believes it would be burdensome for operators to conduct

[1] Although these lines are not regulated under part 195, PHMSA's rules for onshore oil spill response plans (49 CFR part 194) cover many rural crude oil gathering lines and low-stress lines. Part 194 regulations apply to oil pipelines that could cause substantial harm to the environment by spilling oil into or on any navigable water of the United States or adjoining shoreline.

[2] In addition to these requirements related specifically to regulated gathering lines, under the Federal pipeline safety law, PHMSA must consider various other factors in prescribing pipeline safety rules (see 49 U.S.C. 60102(b)).

such surveys just to identify nonrural line segments in rural-like settings and to discover later changes in population. Apart from AOPL's comment, operators of nonrural gathering lines have not expressed dissatisfaction with the present regulatory scheme of part 195. Therefore, PHMSA is not proposing to change how part 195 applies to nonrural gathering lines.

After filing its written comment, AOPL sent PHMSA data for the years 2001–2003 on 583 gathering line spills collected from five of its member companies, representing multiple gathering systems. The origin of the data was the industry's Pipeline Performance Tracking System, a voluntary data collection effort that began in 1999. Participants report spills of 5 gallons or more to land and all spills to water from oil pipelines, whether regulated by part 195 or not. AOPL's data shows one third of the spills were 5 barrels or more. The data also show corrosion (84%) and excavation damage (7%) caused 91 percent of the reported gathering line spills; pipe material and weld failure, 2 percent; and other identified causes, less than 1 percent.

Arctic Connections, an environmental consulting firm based in Alaska, urged PHMSA to regulate rural gathering lines in sensitive Alaskan wetlands and coastal environments because oil spills threaten subsistence living and have lasting effects in the Arctic. The Cook Inlet Regional Citizens Advisory Council, a nonprofit environmental protection organization, and Cook Inlet Keeper, a nonprofit watershed protection organization, also supported regulation of unregulated pipelines that threaten Alaska's Cook Inlet. To show the need for regulation, Arctic Connections and Cook Inlet Keeper filed data from the Alaska Department of Environmental Conservation (ADEC) and other sources on releases by various unregulated pipelines in Alaska. Although the data do not distinguish pipelines by type, Cook Inlet Keeper said its review showed most of the oil spills in Cook Inlet between 1998 and 2003 came from unregulated gathering lines.

North Slope Borough, the northernmost county of Alaska, favored regulation of all high-pressure, large-diameter North Slope lines that could injure residents or affect subsistence living, the environment, or traditional use areas.

Delta County Colorado considered regulation of rural gathering lines essential to assure safe development of oil and gas in areas experiencing increased pressures of population growth. Delta County thought safety rules should apply to all gathering lines (rural and nonrural), but should be suitable for the risks involved.

Chevron Texaco Upstream and the U.S. Department of Energy (DOE) suggested PHMSA identify and analyze the risks of rural gathering lines and target regulations to specific problems. The Independent Petroleum Association of America (IPAA) also urged PHMSA to focus on actual—not speculative—risks.

DOE and IPAA were concerned with the possible increased costs of gathering crude oil could cause producers to shut in marginally profitable wells. They pointed out that added costs would have the potential to reduce the nation's oil supply and hinder development of new wells.[3] The Interstate Oil & Gas Compact Commission defines marginal wells, sometimes called "stripper" wells, as wells producing 10 barrels of oil per day or less. DOE also said some part 195 rules, such as integrity management, corrosion control, personnel qualification, public education, accident reporting, and determining whether a pipeline could affect a high consequence area, could be too costly for smaller operators to carry out. (A discussion of energy impacts is under the Regulatory Analyses and Notices section of this document.)

The Oklahoma Independent Petroleum Association (OIPA) also expressed concern about the potential impact on marginal wells of imposing new safety rules on rural gathering lines. In addition, OIPA argued PHMSA should not consider regulating rural gathering lines until it has data showing the types and scale of safety problems.

3. Comments Addressing Rural Low-Stress Lines

On June 26, 2006, PHMSA held both a public workshop and meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee to discuss how best to regulate low-stress lines to better protect unusually sensitive areas from risks from spills. During this meeting PHMSA received several significant comments.

API and AOPL presented their proposal, which is discussed in detail in Section II. b. below. The majority of the participants agreed that recent accidents reinforced the need for PHMSA's plan to regulate low-stress lines near unusually sensitive areas (USAs), and supported, for the most part, API's and AOPL's regulatory proposal. API and AOPL's proposal recommended low-stress lines located within ¼ mile of an USA, i.e., buffer, be partially regulated under part 195. Their analysis of the spill data for low-stress pipelines showed that the ¼-mile buffer would contain the spread in 99.6% of the releases. Several of the commenters questioned whether the proposed ¼-mile buffer was large enough to provide adequate protection to these critical areas. Some commented on whether a larger buffer would encompass too many lines. Others questioned the effectiveness of leak detection methods on these lines. The transcript of this meeting is in the docket (PHMSA–2003–15864). PHMSA invites comments on whether the proposed ¼-mile buffer zone is appropriate.

Conoco Phillips noted that most unregulated low-stress pipelines are less than 1-mile long, and are rarely more than 25 miles. Conoco Phillips also noted that the primary threat to the unregulated low-stress lines is corrosion because many lack an effective coating and cathodic protection. Further, it noted that internal corrosion may be exacerbated by water and microbiological organisms.

The Alaska Department of Environmental Conservation also believes that government oversight is needed for unregulated low-stress lines. and shared its proposal on how Alaska plans to address lines not currently regulated by PHMSA.

II. Need To Regulate

a. Rural Onshore Hazardous Liquid Gathering Lines

Congress recognized some rural gathering lines might pose risks warranting federal safety regulation and authorized DOT to regulate a class of rural gathering lines called "regulated gathering lines" based on risk-related physical characteristics, such as diameter, pressure, location, and length of line. In its report on H.R. 1489, a bill that led to the Pipeline Safety Act of 1992, the House Committee on Energy and Commerce said "DOT should find out whether any gathering lines present a risk to people or the environment, and if so how large a risk and what measures should be taken to mitigate the risk" (H.R. Report No. 102–247—Part 1, 102d Cong., 1st Session, 23 (1991)). In PHMSA's view, Congress wanted to limit "regulated gathering lines" to lines posing a significant risk and to limit regulation of those lines to suitable risk-reduction measures.

To get more information about rural crude oil gathering lines PHMSA asked the public whether these pipelines pose a risk warranting pipeline safety

[3] Marginal wells account for 16 percent of US oil production (Interstate Oil and Gas Compact Commission, "Marginal Oil and Natural Gas: American Energy for the American Dream, 2005)."

regulation, and, if so, what those rules should be. As discussed in section I of this preamble, commenters largely recognized a need for PHMSA safety rules to prevent serious accidents and to respond to Congress' safety concern. Most commenters backed rules addressing known risks of a significant scale. However, a few commenters expressed concern that extensive rules could cause producers to shut in marginal wells or divert transportation to riskier modes—mainly trucks.

A few commenters submitted data about oil pipeline accidents, including accidents on rural crude oil gathering lines. AOPL's data show corrosion damage and excavation damage were the leading causes of spills, and 33 percent of the spills were 5 barrels or more. Although the data do not separate spills occurring from rural gathering lines from those occurring from other unregulated liquid lines, the spill causes are consistent with PHMSA's accident data on hazardous liquid pipelines overall. Also, there is no reason to expect rural gathering lines are less vulnerable to corrosion, excavation damage, and other integrity threats than nonrural gathering lines. They may be even more vulnerable because they have not been subject to federal safety regulation to ensure their continued integrity. While we have limited data, we think it is reasonable to assume AOPL's data are representative of rural crude oil gathering lines. A full discussion of the available data is in the regulatory evaluation for this proposed rulemaking, which can be obtained in the docket listed above.

A 1997 report by California's Office of the State Fire Marshal, "An Assessment of Low-Pressure Crude Oil Pipelines and Gathering Lines," strengthens this assessment. In California, the State Fire Marshal regulates intrastate pipelines covered by part 195. The report, available online at *http://osfm.fire.ca.gov/lowpressrpt.html*, concerns accidents during 1993–1995 on rural gathering lines and other pipelines specifically exempt from part 195. According to the report, the leading causes of the accidents " corrosion and excavation damage—matched the leading causes of accidents on regulated pipelines.

b. Rural Onshore Hazardous Liquid Low-Stress Lines

The original safety regulations for hazardous liquid pipelines did not apply to any low-stress pipelines. Because of their low operating pressures and minimal accident history, low-stress hazardous liquid pipelines were thought to pose little risk to public safety. PHMSA began rulemaking in this area in 1990 following one of the most prominent hazardous liquid pipeline accidents on record involving the spill of approximately 500,000 gallons of heating oil from an underwater pipeline in Arthur Kill Channel in New York.

To get more information on low-stress lines, in 1990, PHMSA published an advance notice of proposed rulemaking (ANPRM) (55 FR 45822; October 31, 1990). In the ANPRM, PHMSA sought information about the costs and benefits of regulating low-stress lines. The analysis of the data received in response to the ANPRM showed regulation of all low-stress pipelines could impose costs disproportionate to benefits. PHMSA, therefore, focused on those low-stress pipelines posing a higher risk to people and the environment. The risk factors identified were the commodity in transportation and the location of the pipeline. In 1994, PHMSA extended the hazardous liquid safety requirements to low-stress pipelines that transport highly volatile liquids (HVL) in all locations, and other low-stress lines in populated areas and where the pipeline segments cross navigable waterways. In this rulemaking, PHMSA deferred regulating non-HVL low-stress pipelines in rural environmentally sensitive areas pending development of a suitable definition of "environmentally sensitive area." The agency said it was developing a better concept of what constitutes an environmentally sensitive area for purposes of pipeline regulation and this would provide the groundwork for the future rulemaking on rural low-stress lines. PHMSA explained that it needed to learn the extent to which low-stress pipeline spills affect environmentally sensitive areas and the definition used in part 194 (Response Plans for Onshore Oil Pipelines) was too broad for part 195.

In 2000, PHMSA issued a final rule defining "unusually sensitive areas" (USAs) (65 FR 246). The USAs address higher risk environmentally sensitive areas needing extra protection. In this rule, PHMSA noted its 1994 decision to defer regulating nonvolatile products transported in low-stress pipelines located in rural sensitive areas until it defined these areas. The agency reiterated its intention to reconsider the issue once there was a sensitive area definition. In 2000, PHMSA defined protection of USAs for most hazardous liquid pipelines through its integrity management regulations. As explained previously in section I.a, this definition was essential to PHMSA's completing its series of risk-based rulemakings to provide better protection to people and the environment from high pressure hazardous liquid pipelines, high pressure gas transmission pipelines and rural gas gathering pipelines. Protecting these areas from rural low-stress lines is the last of these initiatives.

Since 2000, there have been about 30 hazardous liquid low-stress line incidents on lines PHMSA currently regulates. While PHMSA does not have incident data for non-regulated lines, we believe a comparable number of incidents have occurred on currently unregulated low-stress lines, some of which have been significant. For instance on August 6, 2006, a crude oil spill occurred on a 30-inch, unregulated low-stress pipeline in the Eastern Operating Area of the Prudhoe Bay Field on the North Slope of Alaska. This spill resulted in the release of at least 20 barrels of crude oil onto the tundra, and at least another 175 barrels that were collected in a portable tank. Previously, on March 2, 2006, a leak from a 34-inch, unregulated low-stress pipeline was discovered in the Western Operating Area of the Prudhoe Bay Field. This leak resulted in the release of approximately 5,000 barrels of processed crude oil. Although we believe these incidents are not representative of the condition of unregulated rural low-stress lines in the lower 48 states, these incidents reinforced the necessity for PHMSA to complete this rulemaking to better protect USAs from any spill that could occur from an unregulated rural low-stress pipeline.

As PHMSA was developing its proposal on how best to address rural low-stress lines, after the March incident, API and AOPL submitted a regulatory proposal on how PHMSA should address certain currently exempt low-stress pipelines. The proposal requests PHMSA:

- Add a new subpart in part 195 to address assessment and control of low pressure pipelines;
- Define regulated low-stress lines as pipelines with a diameter greater than 8⅝ inches, operating at 20 percent or less of SMYS, located off the operator's property, and located within ¼-mile of an unusually sensitive area; and
- Modify 49 CFR 195.1(b)(iii) to add petroleum storage facilities to the list of facilities exempt from regulation, unless a facility crosses a sole source aquifer in an unusually sensitive area.

Further, API and AOPL propose that PHMSA add programmatic requirements to require operators of a regulated rural low-stress line to comply with the reporting requirements in subpart B, the corrosion control requirements in subpart H, the line marker requirements in § 195.410, and four additional requirements:

1. *Assessment:* The operator should inspect the pipeline using in-line inspection tools or commensurate technology to assess the pipeline segment every five years unless the operator performs an engineering analysis to justify a longer timeframe.

2. *Leak Detection:* The operator should have a means to detect leaks on the covered pipelines.

3. *Damage Prevention:* The operator should put in place basic damage prevention practices, such as registering facilities with one-call organizations and excavation monitoring.

4. *Training for Abnormal Operating Conditions:* The operator should be trained to recognize and respond to abnormal operating conditions.

Lastly, API and AOPL recommend, with the exception of line identification, operators have up to 5 years after the effective date of a rule to begin compliance.

As a follow-up to the June 26th public meeting, the Cook Inlet Regional Citizens Advisory Council submitted comments to the docket. Cook Inlet recommends eliminating the low-stress regulatory exemption in 49 CFR 195.1(b)(3)(i). Instead, Cook Inlet recommends PHSMA apply its baseline pipeline regulations to all low-stress transmission pipelines, and its integrity management program rules to those low-stress transmission pipelines that may affect High Consequence Areas.

API and AOPL also submitted supplemental information reflecting their analysis of spill data. They found that of the 312 large releases of hazardous liquids (greater than five barrels) between 1999 and 2004, only 67 (21%) were from low-stress transmission pipelines. Further, releases from low-stress lines accounted for only 7% of the total volume of hazardous liquid releases from all pipeline incidents. They determined that corrosion (64%) and third party damage (21%) together caused 85% of these releases from low-stress pipelines.

c. Conclusion for Need To Regulate

Based on our consideration of Congress' safety concern, the public comments, and the accident data, we believe the potential for future harm to the public's health and environment from rural onshore gathering and rural low-stress lines is clear. The record shows rural gathering lines experience the same leading causes of accidents as hazardous liquid pipelines we now regulate, and releases from unregulated low-stress lines can affect unusually sensitive areas. Therefore, we believe it no longer appropriate to continue to exempt rural onshore gathering lines and rural low-stress lines from nearly all safety requirements in part 195.

III. Regulatory Options

In considering what safety rules should apply to "regulated rural gathering lines" and "regulated rural low-stress lines," the first alternative we considered was to collect more information about the potential hazards of these lines before proposing any specific safety rules. We rejected this alternative because we believe we have sufficient information; collecting more information would be unlikely to change our current understanding of the risks these lines pose.

The second alternative we considered was to apply all part 195 rules to regulated rural gathering lines and, as suggested by Cook Inlet, for regulated rural low-stress lines. We rejected this alternative because it could impose significant costs on the industry without offsetting safety benefits. Also, the costs could have a significant effect on U.S. oil supplies by causing production to stop at many marginal oil wells. Further, while we understand Cook Inlet's desire to extend oversight to all low-stress lines, we believe we should focus on those posing the most significant threats to USAs, and on the most critical issues associated with those lines. Therefore, the proposal only includes safety requirements that address the most prominent threats to low-stress lines. This determination is based on our analysis of the most critical safety concerns, including the data submitted by API and AOPL demonstrating that corrosion and third party damage cause the greatest threat to the integrity of these lines.

The third alternative was to adopt the approaches API and/or AOPL suggested. For gathering lines, AOPL's suggested approach includes limited operation and maintenance rules and reporting rules for accidents and safety-related conditions. The operation and maintenance rules would be the public education rules in § 195.440, the excavation damage prevention rules in § 195.442, and the corrosion control rules in subpart H of part 195. The reporting rules would be provisions of subpart B of part 195 related to accidents and safety-related conditions. The benefit of this alternative is it would focus on the leading threats to rural gathering lines—corrosion and excavation damage. Also the information collected would enable PHMSA to recognize safety problems and evaluate the effectiveness of adopting only limited safety rules.

By focusing mainly on the threats of excavation damage and corrosion, the AOPL approach does not address significant safety issues related to pipeline design, construction, and testing, such as choice of materials, qualification of welding procedures, and suitable test pressure. AOPL's approach does not include installation and maintenance of line markers under § 195.410 or operator qualification program requirements under part 195, subpart G. The use of line markers to warn excavators of the presence of hazardous liquid pipelines has long been a safety practice in the hazardous liquid pipeline industry. Regarding operator qualifications, Congress mandated PHMSA establish regulations for operator qualification programs on pipelines. Congress also directed pipeline operators to develop and adopt a qualification program should DOT fail to prescribe standards and criteria.

The fourth alternative to address rural onshore low-stress lines was also the approach suggested by API and AOPL. This approach would subject rural onshore hazardous liquid low-stress lines that have a diameter greater than 8⅝ inches, operate at 20 percent SMYS, and are located within a ¼-mile of an unusually sensitive area to certain regulatory requirements. The regulatory approach includes the reporting requirements of part 195, subpart B, the corrosion control rules in part 195, subpart H, the damage prevention rules in § 195.442, and installation of line markers in § 195.410. The API and AOPL approach also includes leak detection, assessment, and limited operator qualification requirements. We believe the information collected about threats on non-regulated gathering lines also applies to threats associated with regulated hazardous liquid lines. Based on this information, we believe corrosion and excavation damage are the leading causes of accidents on low-stress lines. Thus, the benefit of this approach is it focuses on these leading threats to rural onshore low-stress lines.

A disadvantage of the API and AOPL approach for rural gathering lines is it does not address other significant safety issues related to pipeline design, construction, and testing, and does not include the public awareness requirements under § 195.440. In its petition, API and AOPL did not explain why these safety requirements were omitted. Regarding public awareness, in 49 U.S.C. 60112(c), Congress mandated that pipeline facility operators establish and carry out continuing public awareness programs to notify the public about the location of its facilities, one-call programs and accident procedures. Further, the API and AOPL proposal does not fully address the operator

qualification requirements. Congress mandated PHMSA establish regulations for operator qualification programs on pipelines. Congress also directed pipeline operators to develop and adopt a qualification program should DOT fail to prescribe standards and criteria. Although Congress provided some flexibility in the statute, we believe that the API and AOPL approach is too limited because it only addresses one of the multiple facets of the operator qualification requirements.

As a fifth alternative, we considered developing new safety rules for "regulated rural gathering lines" and "regulated rural low-stress lines." We rejected this alternative because we have no reason to conclude part 195 safety rules now in effect for non-rural gathering and low-stress lines would be less effective if applied to rural lines. Our experience shows part 195 rules are effective and should work well for "regulated rural gathering lines" and "regulated rural low-stress lines" because the integrity threats involved are similar for all the lines.

Finally, we considered modified versions of the approaches API and AOPL suggested for rural gathering and low-stress lines. This approach would provide integrity protection by focusing on the primary threats to these lines—corrosion and third-party damage. For rural gathering, this alternative would add, line marker requirements under § 195.410 and the qualification requirements in subpart G for the operator's personnel. Markers are a traditional way of alerting excavators to dig carefully in the presence of hazardous liquid pipelines. Under 49 U.S.C. 60131, DOT must require pipeline operators to develop and adopt a qualification program that complies with the standards DOT develops for such programs.

In addition, the modified version would require operators to establish a maximum operating pressure for each steel line according to § 195.406, and to design, construct, and test lines according to applicable part 195 rules. A maximum operating pressure would guard against the danger of accidental overpressure. Part 195 design, construction, and testing rules would ensure a minimum standard of integrity for all new, replaced, and relocated "regulated gathering lines." We required similar rules on markers, operating pressure, design, construction, and testing for rural gas gathering lines in a final rule published March 15, 2006 (71 FR 13289). These requirements should not be too burdensome, because similar safety requirements are in the *ASME B31.4 Code*, "Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids," a consensus standard followed widely throughout the hazardous liquid pipeline industry.

Our modified approach to the API and AOPL suggestion for rural onshore low-stress lines would include public awareness requirements in § 195.440 and a modified version of the operator qualification requirements. These operators are also required under 49 U.S.C. 60102(a) to have public awareness program. Under 49 U.S.C. 60131(e)(5) and (f), Congress allowed DOT and State pipeline safety agencies to waive or modify any operator qualification requirement if not inconsistent with the pipeline safety laws. PHMSA believes an approach similar to the modified approach used for gas gathering would be appropriate for low-stress lines. This modification would allow operators to describe the processes they have in place to ensure personnel performing operations and maintenance activities are qualified.

Additionally, the modified version would require operators to establish a maximum operating pressure for each steel line according to § 195.406, and to design, construct, and test lines according to applicable part 195 rules. A maximum operating pressure would guard against the danger of accidental overpressure. Part 195 design, construction, and testing rules would ensure a minimum standard of integrity for all new, replaced, and relocated "regulated rural low-stress lines." Lastly, the modified version would require an operator to periodically assess the integrity of the lines to identify and address any conditions affecting the integrity of the lines, no matter the cause, and to establish and maintain a leak detection program based on API's recommended practice 1130 (API 1130) "Computational Pipeline Monitoring," which is currently being used by industry and is incorporated by reference into our existing regulations. Because API 1130 only addresses pipelines transporting a stable single phase product, operators transporting other products will need to develop another appropriate leak detection method.

Further, our modified version includes additional corrosion control requirements for onshore rural gathering lines and low-stress lines. Our proposal includes a requirement to continuously monitor these lines and based on identified changes to clean and accelerate the corrosion control program when necessary.

A discussion of the safety rules we are proposing is in section IV of this preamble.

IV. Proposed Regulations for Regulated Rural Gathering Lines

a. Proposed Definition of "Regulated Rural Gathering Line"

We are defining those rural gathering lines presenting a higher risk to public health and the environment as regulated rural gathering lines.[4] PHMSA believes Congress did not think all rural gathering lines subject people or the environment to a high enough risk to qualify as a regulated rural gathering line. This reasoning is based on the various risk factors the statute requires us to consider, the complete exemption in most rural areas of low-pressure lines 6 inches or less in nominal diameter. Thus, we have determined higher risk rural areas are those areas we defined in § 195.6 as unusually sensitive areas. These areas include drinking water and ecological resource areas.

PHMSA considered whether the present definition of gathering line in § 195.2 is acceptable. This definition represents the typical function of a crude oil gathering line—to move crude oil away from a production facility. It also represents the typically small size of crude oil gathering lines—8⅝ inches or less in nominal outside diameter. Since its adoption, the definition has served to identify which petroleum pipelines in rural areas are exempt from part 195 because they are gathering lines. Also, in our experience, operators and government inspectors have had little difficulty using the definition for that purpose. We decided, therefore, the § 195.2 definition of gathering line is acceptable for helping to define a regulated rural gathering line. Furthermore, because we are not changing the coverage of the non-rural gathering lines we now regulate, we see no reason to change the long-standing definition of a gathering line.

Congress identified "throughput" and "composition of the transported hazardous liquid" as two other possible risk factors to consider in determining which rural gathering lines should be regulated. We think it unnecessary to include these factors. Throughput, or volume of oil moved in a unit of time, is largely dependent on pipe diameter and operating pressure. And the composition of hazardous liquids transported by gathering lines is chiefly crude oil.

[4] Although the statute directs us to define a regulated gathering line, for purposes of this rulemaking, we are proposing to define *regulated rural line*. Non rural onshore gathering is already regulated under part 195 and we are not proposing to change regulation of these currently regulated lines. This rulemaking focuses on certain rural onshore gathering not presently regulated.

AOPL was the only commenter to offer a definition of "regulated gathering line." Under this definition, a "regulated gathering line" would be a line 6 inches or more in nominal diameter operating above 20 percent of SMYS that could affect a high-consequence area.

An advantage of AOPL's definition is its use of the statutory risk factors of diameter, operating pressure (expressed as a percentage of SMYS), and location (could affect a high consequence area) to identify higher-risk lines. And we think the definition uses these factors in a reasonable way.

Our proposed definition of a regulated rural gathering line is based in part on AOPL's suggested definition. AOPL's definition is based on gathering lines in high consequence areas. High consequence areas include populated areas. We already regulate onshore gathering lines in populated areas and are not proposing to change any of the pipeline safety requirements applicable to these lines. Therefore, we are basing our definition on those rural gathering lines meeting certain criteria and located within a defined zone of an unusually sensitive area as defined in § 195.6. Unusually sensitive areas include drinking water and ecological resource areas. These areas are unusually sensitive to environmental damage from a hazardous liquid pipe release because a release into these areas could substantially impact the Nation's supply of drinking water, endanger public health, and create long-term or irrevocable damage to the habitat of threatened and endangered species.

Our proposed definition, like AOPL's definition, does not use line length as a defining characteristic of these higher-risk rural lines. Line length, a statutory risk factor, is relevant to potential spill volume, because the shorter the line, the less oil there is to drain out after shutdown. Part 194 recognizes this risk factor by not requiring spill response plans for certain small pipelines 10 miles or less in length. However, because short lines can cause substantial environmental harm in vulnerable locations, part 194 does not allow operators to use the 10-mile exception for lines proximate to navigable waters, public drinking water intakes, or environmentally sensitive areas.

Instead of using AOPL's criteria to define a regulated rural gathering line as one that could affect an unusually sensitive area, we have decided to use a buffer. We saw a potential difficulty in operators determining which lines could affect an unusually sensitive area. Part 195 uses the phrase "could affect a high consequence area" to identify pipelines subject to integrity management rules (§ 195.452). Section I. B. of Appendix C to part 195 lists various risk factors, such as topography and shutdown ability, an operator can use in deciding if a pipeline "could affect a high consequence area." PHMSA believes this would be too burdensome for most operators. To reduce the burden of making this decision for possibly thousands of rural line segments, we are proposing a buffer—a distance beyond the defined area where a rural gathering line presumably could not affect that area.

PHMSA considered the buffers used in §§ 194.103(c)(4) and (5) of the Oil Spill response plan requirements. Those sections require a buffer of five miles from a public drinking water intake and one mile from an environmentally sensitive area. However, after reviewing the incident data, we concluded those buffer sizes were not warranted. During the June 26th public meeting, AOPL clarified it recommended a buffer of ¼-mile for rural gathering lines because its data revealed the largest on land spill from a pipeline traveled no more than 2 acres. The operating pressure is also a factor when evaluating the potential spill volume from a pipeline. Thus, gathering lines operating at lower pressures do not have the potential to release as much product as those operating at higher pressures. Thus, we have determined that gathering lines that operate above 20% SMYS and that are between 6⅝ inches and 8⅝ inches in diameter and are located in or within ¼-mile of an USA have the potential to substantially impact public health and the environment. We invite comments and supporting technical documentation on whether a larger buffer is needed to provide better protection for these critical environmental areas. PHMSA would also like data on the miles of gathering lines likely to be affected by any increase in the size of the buffer.

Thus, we are proposing to add a new section 195.11(a) that would define a "regulated rural gathering line" as a rural onshore gathering line with the following characteristics:

- A nominal diameter between 6⅝ inches and 8⅝ inches;
- Operates at a maximum operating pressure established under § 195.406 that corresponds to a stress level greater than 20 percent of SMYS or, if the stress level is unknown or the pipeline is not constructed with steel pipe, at a pressure of more than 125 psig; and
- Is located in or within ¼-mile of an unusually sensitive area as defined in § 195.6.

A pressure of 125 psig conservatively approximates 20 percent of SMYS for steel pipe of unknown stress level, based on minimum weight pipe 8 inches in nominal diameter with 24000 psi yield strength.

We invite comments and supporting technical documentation on whether values other than 125 psig and ¼-mile would be more suitable for the respective purposes. We are particularly interested in comment on whether the proposed ¼-mile buffer is adequate to protect those drinking water and ecological resources particularly vulnerable to damage from a hazardous liquid pipeline release, or whether a larger buffer is needed. If commenters believe a larger buffer is needed, data on the pipeline mileage that would be affected would be helpful.

b. Proposed Rewrite of § 195.1

Section 195.1 specifies the hazardous liquid pipeline facilities subject to the requirements of part 195 and those exempt from coverage. We propose to rewrite this section to clarify which lines are subject to part 195. This section clarifies that onshore non-rural gathering lines are subject to all of part 195's requirements. A regulated rural gathering line, as defined in this proposal, would be subject to the limited safety requirements provided in a new § 195.11, discussed below.

The rewrite of § 195.1 clarifies the present rulemaking does not affect onshore gathering lines in inlets of the Gulf of Mexico. Onshore gathering in these inlets would continue to be subject only to the inspection and burial rules in § 195.413. At no point during our public meetings on regulating onshore gathering lines in rural areas did anyone comment on the need to expand these rules.

We also have clarified the language in several of the exceptions from part 195's coverage. We have not changed the intent or scope of any of these. We have simply cleaned up some of the language to make the exceptions easier to read.

c. Proposed Safety Requirements for "Regulated Rural Gathering Lines"

A new § 195.11(b) would be added to the part 195 regulations to specify the safety requirements for these lines. We have developed these proposed requirements to manage the integrity of rural gathering lines by providing complete protections to address the known significant threats and to continue to collect more information about these lines through the reporting requirements. Based on our review of the gathering lines in populated areas and our investigation of the non-

regulated lines in rural areas, we have found that the highest risks to these lines are corrosion and third party damage. This proposal focuses on those threats. Through continuous monitoring of the lines, required as part of the corrosion program, the operators will gather more information about the risk the lines pose. We seek comments on whether this proposal should specifically address other threats. We also seek comment on whether PHMSA should require all gathering line operators to submit an annual report and accident reports as required for regulated operators by §§ 195.49 and 195.59.

Operators would first have to identify all segments of regulated rural gathering pipeline. Operators would have to design, install, construct, initially inspect, and initially test new, replaced, relocated, or otherwise changed steel lines according to certain existing part 195 rules. However, for pipelines converted to hazardous liquid service, operators would have the option of following the conversion rules in § 195.5.

Operators of newly constructed non-steel lines would have to notify PHMSA at least 90 days before the start of transportation. The notice would give PHMSA an opportunity to review the pipeline and order any changes necessary for safety.

Under the proposal, operators would have to comply with the reporting requirements in subpart B of part 195. The other proposed safety requirements for these regulated rural lines include:

- Establishing a maximum operating pressure under § 195.406;
- Installing and maintaining line markers under § 195.410;
- Establishing and applying a public education program according to § 195.440;
- Establishing and applying a damage prevention program according to § 195.442;
- For steel lines, controlling and remediating corrosion according to subpart H of part 195; to include cleaning, continuous monitoring, and remediating any problems identified; and
- Establishing and applying an operator qualification program that describes the processes the operator has in place to ensure the personnel performing operations and maintenance activities are qualified.

To address one of the major threats to these lines, we are proposing operators include these lines in their corrosion control program. A corrosion control program under part 195's subpart H includes provisions on how an operator is to remediate corroded pipe. We are also proposing additional corrosion control requirements in the form of continuous monitoring and cleaning. We seek public comment on whether the continuous monitoring provision primarily associated with corrosion control should be as proposed, or extended to other provisions of this proposed rule.

Although not listed as a specific safety requirement in the rule, operators are required to continue to comply with the drug and alcohol testing rules in 49 CFR part 199. Part 199 requires operators of pipelines subject to part 195 to test personnel for use of prohibited drugs and misuse of alcohol. Persons subject to testing are those who perform a regulated operation, maintenance, or emergency-response function on a regulated pipeline.

Under § 195.406, the maximum operating pressure of a pipeline is the lowest pressure applicable to the pipeline among a list of pressures. However, most of the pressures listed apply only to pipelines subject to the design and pressure testing rules of part 195. The only pressure applicable to pipelines not subject to those rules is in § 195.406(a)(2)—the design pressure of any other component of the pipeline. Because operators normally do not operate a hazardous liquid pipeline above its design pressure, compliance with § 195.406(a)(2) should not be difficult on "regulated rural gathering lines" to which part 195 design and pressure testing rules would not apply. Still, we do not want operators to reduce operating pressure unnecessarily on any existing line with a history of satisfactory operation. So we invite comments on the need to amend § 195.406 to allow such continued operation and, if so, what that amendment should be.

The proposal provides, except for the requirements applicable to newly-constructed pipelines and corrosion control, the safety requirements apply to all materials of construction.

The proposed time frames for compliance with each proposed safety requirement are shown in section V.d. of this document. The proposed compliance deadlines vary according to the safety requirements. To gain a better understanding of how different time frames will affect the costs and feasibility of an operator's compliance, we have proposed a range of compliance times. This approach will allow operators longer time frames for complex activities that are more costly to implement, and to readily implement less complex safety requirements. For example, under the proposal, operators would have six months, 12 months or some period in between those time frames after the effective date of the final rule to identify regulated rural gathering pipeline segments and to comply with the reporting requirements. The corrosion control program, including the additional requirements for continuous monitoring, remediation and cleaning, would have to be in place within two to three years from the final rule's effective date. We believe a longer time frame for the corrosion control program may be necessary for pipelines that require major construction to implement new monitoring, remediation, or cleaning facilities. Additionally, recoating of the line involves major construction and a longer planning and construction cycle may be necessary.

A final rule will require a period somewhere in the proposed ranges. Our preference is for shorter compliance periods. But we have proposed a lower and upper range of compliance periods so that in a final rule we can set compliance times that can be done quickly enough to address any problems on these lines but are not cost burdensome, impractical or have an adverse effect on energy supply. We seek comments and supporting documentation to address the effects of these compliance periods on an operator's operations. These comments should address cost, operational difficulties in complying, technology concerns, and other issues, such as time needed to secure necessary permits.

d. New Unusually Sensitive Areas

Proposed § 195.11(c) concerns onshore rural gathering lines that become "regulated rural gathering lines" because of a new unusually sensitive area. Operators should at least annually review the National Pipeline Mapping System (NPMS) to determine if the addition of a new unusually sensitive area has caused any of their unregulated rural gathering lines to become "regulated rural gathering lines." We are proposing a range between six months to one year for compliance with applicable safety requirements when a previously unregulated line becomes regulated. We seek comments and supporting documentation that address the effect of these time frames on the costs and feasibility of compliance. We want to completely understand the impacts of an operator's ability to comply with a shorter or longer time frame.

e. Records

Proposed § 195.11(d) provides record retention requirements. Certain records,

such as the segment identification records, would have to be retained for the life of the pipe. Other records would have to be kept according to the record keeping requirements of the specific section or subpart referenced.

V. Proposed Rules for "Regulated Rural Low-Stress Lines"

a. Proposed Definition of "Regulated Rural Low-Stress Lines"

We are proposing to define regulated rural low-stress lines as those rural low-stress lines presenting a higher risk to the public's health and the environment. Congress directed PHMSA to focus pipeline regulation on protecting people and the environment against risks presented by pipeline transportation, but not to exempt pipeline facilities solely because they operate at low-stress levels. Thus, as with rural gathering lines, we determined the higher risk rural areas that should be protected from a release from a low-stress pipeline are those areas we defined in § 195.6 as unusually sensitive environmental areas. These areas include drinking water and ecological resource areas.

After evaluating the accident history and the API and AOPL proposed definition, we believe PHMSA's definition should focus on rural low-stress lines with a diameter of 8⅝ inches or more and operating at 20 percent or less of SMYS that could cause harm to an USA. In its proposed definition, API and AOPL recommended a buffer zone of ¼-mile from an USA and provided data showing the impact from a spill has not gone beyond ¼-mile. Their data showed hazard liquid releases, regardless of whether the spill has a radius, diameter, or ellipse formation, will not spread more than ¼-mile. Based on this data, PHMSA proposes a ¼-mile buffer as the zone of protection for an USA. Thus, if a rural low-stress line meets the above criteria and is within ¼-mile of an USA, it would be regulated.

PHMSA considered the buffer zones used in § 194.103(c)(4) and (5) of the Oil Spill response plan requirements, but after reviewing the incident data found those buffer sizes were not warranted. We believe regulating low-stress pipeline segments located within ¼-mile of an unusually sensitive area provides a reasonable zone of protection for these areas from the release of large quantities of hazardous liquids. We invite comments and supporting technical documentation on whether a larger buffer is needed to provide better protection for these critical environmental areas. PHMSA would also like data on the miles of low-stress lines likely to be affected by increasing the buffer size.

We are proposing to add a new section § 195.12(a) to define a "regulated low-stress line" as an onshore line in a rural area meeting the following criteria:

- A nominal diameter of 8⅝ inches or more;
- Located within ¼-mile of an unusually sensitive area as defined in § 195.6; and
- Operates at a maximum pressure established under § 195.406 that corresponds to a stress level equal to or less than 20 percent of SMYS, or if the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less an 125 psig.

b. Proposed Rewrite of 195.1

We propose to rewrite this section to clarify which lines are subject to part 195. This section clarifies which low-stress pipelines are subject to part 195 and which are exempt. A regulated rural low-stress line would be subject to the limited safety requirements provided in a new § 195.12, discussed below.

We also have clarified the language in several of the exceptions from part 195's coverage. We have not changed the intent or scope of any of these. We have simply cleaned up some of the language to make the exceptions easier to read. PHMSA is not adopting AOPL's suggestion to exempt petroleum storage facilities in § 195.1 because the proposal is unclear as to which storage facilities should be exempt. For example, regulated tanks are tanks that are used to relieve surges in a pipeline system or used to receive and store hazardous liquid transported by a pipeline for reinjection and continued transportation by pipeline. API/AOPL, in their proposal and presentation at the public meeting, did not explain why these facilities should be exempted.

c. Proposed Safety Requirements for "Regulated Rural Low-Stress Pipelines"

A new § 195.12(b) would be added to part 195 regulations to specify the safety requirements for regulated rural low-stress lines. As we did with rural gathering lines, we have developed these safety protections to address the known threats to the integrity of these lines. Based on our review of regulated low-stress lines and our investigation of non-regulated lines in rural areas, we have found that the highest risks to these lines are corrosion and third party damage. Although this proposal focuses on those threats, operators will gather additional information through the reporting requirements, the continuous monitoring required as part of the corrosion program, and the integrity assessment that includes identification and remediation of any condition presenting a threat to the integrity of these lines, no matter the cause. We seek comments on whether this proposal should specifically address other threats. We seek comment on whether PHMSA should require all operators of low-stress lines to submit an annual report as required by § 195.49.

Operators would have to identify all segments of regulated rural low-stress lines. They would also have to design, install, construct, initially inspect and test new, replaced, relocated, or otherwise changed steel lines according to certain existing part 195 requirements. However, for pipelines converted to hazardous liquid service, operators would have the option of following the conversion rules in § 195.5.

Under the proposal, operators would have to comply with the reporting requirements in subpart B of part 195. The other proposed safety requirements for these regulated rural lines include:

- Establishing a maximum operating pressure under § 195.406;
- Installing and maintaining line markers under § 195.410;
- Establishing and applying a public education program according to § 195.440;
- Establishing and applying a damage prevention program according to § 195.442;
- For steel lines, controlling and remediating corrosion according to part 195, subpart H, and cleaning and continuous monitoring to identify and remediate problems;
- Establishing and applying a modified operator qualification program to allow an operator to describe the processes the operator has in place to ensure personnel performing operations and maintenance activities are qualified under part 195, subpart G;
- Establishing and applying a program to assess at continuing intervals the integrity of the low-stress lines. The purpose of this assessment is to determine and remediate any condition presenting a threat to the integrity of these regulated segments. These conditions are not limited to those caused by corrosion or third-party damage. The proposal allows an operator to use in-line inspection tests and pressure testing as assessment methods. An operator could also use alternative technology, such as direct assessment, if the operator demonstrates the technology can provide an equivalent understanding of the line

pipe. If an operator uses direct assessment, PHMSA would expect the methodology to follow that required for using direct assessment in the gas integrity management regulations; and

• Establishing and applying a leak detection program based on API 1130, or other appropriate method suitable for the commodity being transported.

To address one of the major threats to these lines, we are proposing operators include these lines in their corrosion control program. A corrosion control program under part 195's subpart H includes provisions on how an operator is to remediate corroded pipe. We are also proposing additional corrosion control requirements in the form of continuous monitoring, cleaning and remediating problems identified from the continuous corrosion monitoring. We seek public comment on whether the continuous monitoring provision associated primarily with corrosion control should be as proposed or extended to other provisions of this proposed rule.

Although not listed as a specific safety requirement in the proposed rule, operators are required to continue to comply with the drug and alcohol testing rules in 49 CFR part 199, which requires operators to test personnel for use of prohibited drugs and misuse of alcohol. Individuals subject to testing are those who perform a regulated operation, maintenance, or emergency-response function on a regulated pipeline.

The proposed compliance deadlines vary according to the safety requirements, and are listed below. To gain a better understanding of how different time frames will affect the costs and feasibility of an operator's compliance, we have proposed a range of compliance times. API and AOPL recommended that compliance begin for all requirements within 5 years, but we believe a phased approach is more appropriate. This approach will allow operators longer time frames for complex activities that are more costly and time consuming to implement, and to readily implement less complex requirements. For example, under the proposal, operators would have six months, 12 months or some period in between those ranges after the effective date of the final rule to identify regulated rural low-stress pipeline segments and to comply with the reporting requirements. The proposal would have an operator establish an integrity assessment program within one year to two years from the final rule's effective date, and allow 5 years to 7 years to complete the integrity assessment of all regulated rural low-stress segments, with half of those segments having to be completed within three to four years from the final rule's effective date. The proposed time frame for the integrity assessment takes into account the time necessary to address physical changes to the pipeline for the use of internal inspection devices, and any extensive planning and construction. The corrosion control program, including the additional requirements for continuous monitoring and cleaning, would have to be in place within two to three years from the final rule's effective date.

A final rule will require a completion period somewhere in the proposed ranges. Our preference is for shorter compliance periods. Shorter periods should be feasible because operators currently comply with many of these requirements and would merely be adding low-stress lines to their current operations. But we have proposed a lower and upper range of compliance periods so that in a final rule we can set compliance times that can be completed quickly enough to address any problems on these lines but are not cost burdensome, impractical or have an adverse effect on energy supply. We seek comments and supporting documentation to address the effects of these compliance periods on an operator's operations. These comments should address cost, operational difficulties in complying, technology concerns, and other issues, such as time needed to secure necessary permits. We also seek comment on whether there are simpler and more immediate methods an operator could use to identify the condition of these regulated rural low-stress pipelines.

d. Compliance Time Frames for Gathering Lines and Low-Stress Lines

Unless otherwise indicated the time frames shown in the chart below are applicable to both onshore rural gathering lines and low-stress lines.

Safety requirement	Time frame
Identification of Line Segments	6 months–12 months following effective date of rule.
Design, Construction, and Testing of Steel Pipelines	1 year–2 years following effective date of rule.
Reporting Requirements	6 months–12 months following effective date of rule.
Maximum Operating Pressure	12 months–18 months following effective date of rule.
Installation of Line Markers	12 months–18 months following effective date of rule for existing lines.
Public Education Program	12 months–18 months following effective date of rule for existing lines.
Damage Prevention Program	12 months–18 months following effective date of rule for existing lines.
Corrosion Control Program	2 years–3 years following effective date of rule.
Operator Qualification Program	1 year–2 years following effective date of rule.
Integrity Assessment Program **	1 year–2 years following effective date of rule.
Integrity Assessment—50% completed **	3 years–4 years following effective date of rule.
Completed Integrity Assessments **	5 years–7 years following effective date of rule.
Leak Detection Program [5]	2 years–3 years following effective date of rule.

e. New Unusually Sensitive Areas

Proposed § 195.12(c) concerns onshorerural low-stress lines that become "regulated rural low-stress lines" because of a new unusually sensitive area. Operators should, at least annually, review the NPMS to determine whether their unregulated low-stress lines have become "regulated rural low-stress lines." We are proposing a range of time periods for compliance with applicable safety requirements when a previously unregulated line becomes regulated. We would establish a period between six months to one year for operators to comply with all proposed requirements except the integrity assessment, and two to three years to do the integrity assessment. We request comment and supporting documentation that addresses the effect of these time frames on the costs and feasibility of compliance. We want to completely understand the impacts of an operator's ability to comply with a shorter or longer time frame.

[5] The compliance time frame applies only to onshore rural low-stress lines.

f. Records

Proposed § 195.12(d) provides record retention requirements. Certain records such as the segment identification records would have to be retained for the life of the pipe. Other records would have to be kept according to the record keeping requirements of the specific section or subpart referenced.

g. Minor Changes to Existing Rules

A few corrosion control rules in subpart H of part 195 address procedures under § 195.402(c)(3). Under the requirements proposed for regulated rural gathering and low-stress lines, operators would have to establish corrosion control procedures under § 195.11(b)(9), not under § 195.402(c)(3). So in existing §§ 195.555, 195.565, 195.573(d), and 195.579(d), we are proposing to replace "§ 195.402(c)(3)" with "§§ 195.11(b)(9), 195.12(b)(8) or § 195.402(c)(3)."

Existing §§ 195.557(a) and 195.563(a) refer to pipelines "constructed, relocated, replaced, or otherwise changed after the applicable date in § 195.401(c)," the deadline for compliance with part 195. Comparable deadlines for "regulated rural gathering lines and regulated rural low-stress lines are in proposed §§ 195.11(b)(9) and 195.12(b)(8), respectively. Thus, in §§ 195.557(a) and 195.563(a), we are proposing to replace "§ 195.401(c)" with "§§ 195.11(b)(9), 195.12(b)(8) or 195.401(c)."

V. Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures. PHMSA considers this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has received a copy of this proposed rulemaking to review. This proposed rulemaking is also significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

PHMSA prepared a draft Regulatory Evaluation of the proposed rule. A copy is in Docket No. PHMSA–2003–15864. If you have comments about the Regulatory Evaluation, please file them as described under the **ADDRESSES** heading of this document.

For the purpose of the Regulatory Evaluation, PHMSA estimates 599 of the 2,722 miles of onshore rural hazardous liquid gathering lines would be newly defined as regulated rural gathering lines as a consequence of the proposed regulatory changes. Since these lines operate at greater than 20 percent of SMYS (or 125 psig), PHMSA assumes major pipeline firms operate these lines.

PHMSA estimates 684 of the 5,000 miles of onshore rural hazardous liquid low-stress lines would be newly defined as regulated rural low-stress lines as a consequence of this proposal. Although these lines operate at lower than 20 percent of SMYS, PHMSA believes the affected operators also are major pipeline firms.

PHMSA acknowledges these mileage figures are estimates. PHMSA invites comments on the reasonableness of those estimates.

Overall, the initial costs of the proposed regulatory changes are expected to be approximately $5 million, the recurring annual costs are expected to be $2 million during years 2 through 6, and the recurring annual costs are expected to be $1 million for years 7 and beyond. The present value of the NPRM over 20 years using a 3 percent discount rate would be $21 million, while its present value over 20 years using a 7 percent discount rate would be $17 million.

Evidence suggests the two most significant safety problems on onshore rural hazardous liquid gathering lines and low-stress lines are corrosion and excavation damage. The proposed regulatory changes address both. Consequently, the intended benefits of the proposed regulatory changes are that they will reduce both.

It is difficult to quantify the benefits that would result from the proposed regulatory changes. Information that could be used to estimate the benefits attributable to improved safety through reduced incidents and incident consequences on gathering lines is difficult to quantify. Benefits due to improved safety can be estimated for low-stress lines, however. Those benefits are $3.3 million per year. The present value of those benefits over 20 years using a 3 percent discount rate would be $49 million, while their present value over 20 years using a 7 percent discount rate would be $35 million. PHMSA invites public comment on its cost and benefit estimates.

In addition to any reduction in incidents that might be attributable to the proposed regulatory changes, we expect the proposed changes to improve public confidence in the safety of onshore hazardous liquid gathering lines and low-stress lines in rural areas. This we believe would be a significant benefit of the proposed regulatory changes.

The proposed rules also may produce public benefits by preventing disruptions in fuel supply caused by pipeline failures. Any interruption in fuel supply impacts the U.S. economy by putting upward pressure on the prices paid by businesses and consumers. Supply disruptions also have national security implications, because they increase dependence on foreign sources of oil. In most cases, we would not expect failures of onshore rural gathering lines to have significant impacts on fuel supply. However, low-stress pipelines in Alaska feeding major liquid pipelines are important links in the fuel supply chain, as recent incidents have illustrated.

Other additional benefits expected to result from the proposed rule include avoided environmental and other damage from pipeline spills. These benefits can be significant. For example, on January 1, 1990, a low-stress pipeline operated by Exxon ruptured and eventually spilled 567,000 gallons of No. 2 fuel oil into the Arthur Kill, which separates Staten Island from New Jersey. The incident has a known cost of nearly $84 million (in 2005 dollars). While the figure includes costs attributable to the spill response by the responsible parties, the natural resources damage assessment, penalties, and "Other", it does not include any public response costs or third party claims against the responsible parties. Even though the proposed rule does not include such costs in its cost estimates, if the rule would prevent only one incident similar to the Arthur Kill spill during the first 20 years, the overall benefits of the proposed rule could potentially increase by between 95% and 166%.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether its rulemaking actions would have a significant economic impact on a substantial number of small entities.

PHMSA assumes major pipeline firms operate the lines that will be regulated under this proposal. These operators are already subject to part 195 because they operate pipelines covered by part 195. These operators will experience slight added costs because they will be required to fold their newly regulated rural gathering lines into their existing part 195 compliance programs.

PHMSA consulted the International Petroleum Association of America (IPAA), which represents over 6,000 independent crude oil and natural gas producers throughout the U.S., and IPAA believes small operators would not be impacted. PHMSA also consulted with the Small Business Administration, which also believes this proposal will not impact small entities. Therefore, PHMSA does not expect the

proposed rules to impact any small entities.

Based on these facts, I certify that a small number of major operators will experience increased costs, but this impact will not be a significant economic impact on a substantial number of small entities. PHMSA invites public comment on its estimate of the number of small entities that would become subject to part 195 for the first time as a result of this rulemaking.

Executive Order 13175. PHMSA has analyzed this proposed rulemaking according to the principles and criteria contained in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rulemaking would not significantly or uniquely affect the communities of the Indian tribal governments nor impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act. This proposed rulemaking contains information collection requirements applicable to operators of hazardous liquid gathering lines and low-stress lines in rural areas. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), PHMSA has submitted a paperwork analysis to the Office of Management and Budget for its review.

Operators of rural gathering lines and low-stress lines proposed to be regulated would have to comply with part 195 information collection requirements regarding corrosion control, damage prevention programs, public education programs, and accident reporting. These operators would also have to comply with the information collection requirements in 49 CFR part 199 concerning drug and alcohol testing.

Certain gathering lines and low-stress lines in nonrural areas are currently subject to part 195. The number of gathering line and low-stress line operators subject to regulation may vary as lines are brought into and taken out of service and as changes occur in the boundaries of nonrural locations. If the proposed rules become final, this number also may vary as changes occur in the boundaries of unusually sensitive areas.

PHMSA currently has an OMB approved information collection request (2137–0047) for hazardous liquid operators under its jurisdiction. PHMSA currently has an OMB approved information collection request (2137–0047) for hazardous liquid operators under its jurisdiction. This proposed rule, if adopted, will not increase the number of operators under PHMSA jurisdiction and will only marginally increase the burden hours currently approved under OMB No. 2137–0047. We estimate that this proposal will require an additional burden of 8 hours. This is for all impacted operators. The total cost of this operator burden is approximately $520.56 (= $65.07 × 8 hours, assuming a senior engineer costing $65.07 fully loaded is preparing the incident reports).

Type of Information Collection Request: Revision of an Existing Collection.

Title of Information Collection: Transportation of Hazardous Liquids by Pipeline.

Recordkeeping and Accident Reporting Requirements Respondents: Estimated 0 new operators.

Estimated Total Annual Burden on New Respondents: 0 hours.

PHMSA invites comments on the above estimates.

Unfunded Mandates Reform Act of 1995. This proposed rulemaking does not include unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more (adjusted for inflation) to either State, local, or tribal governments, in the aggregate, or to the private sector, and it is the least burdensome alternative that achieves the objective of the proposed rulemaking.

National Environmental Policy Act. PHMSA has analyzed the proposed rulemaking for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). PHMSA has preliminarily determined that the proposed rulemaking is unlikely to significantly affect the quality of the human environment.

The proposed rulemaking would require only limited physical modification or other work that would disturb pipeline rights-of-way, such as, identifying segments of pipelines meeting the regulatory definitions, inspection and testing, installing and maintaining line markers, implementing corrosion controls, pipeline cleaning, and establishing integrity assessment and leak detection programs. All of these activities result in negligible to minor negative environmental impact. PHMSA also believes that many of these safety measures (for example, implementing corrosion control and installing and maintaining line markers) are already being undertaken for a large portion of the pipeline mileage that would become regulated under the proposed rules. Furthermore, by requiring these and other safety rules such as accident reporting, implementing public education and damage prevention programs, and establishing operator qualification programs, it is likely the number of spills on rural gathering lines and low-stress lines will be reduced, thereby resulting in minor to moderate positive environmental impact that would offset the negative environmental impacts.[6]

An environmental assessment document is available for review in Docket No. PHMSA–2003–15864. A final determination on environmental impact will be made following the close of the comment period. If you have any comments about this draft and environmental assessment, please submit them as described under the **ADDRESSES** heading of this document.

Executive Order 13132. PHMSA has analyzed the proposed rulemaking according to the principles and criteria contained in Executive Order 13132 ("Federalism"). None of the proposed regulatory requirements (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Although the state consultation requirements do not apply to this proposed regulatory action because there are no preemption issues, PHMSA has involved state pipeline safety personnel in discussing approaches on regulating rural gathering and low-stress pipelines. PHMSA representatives met on several occasions with the National Association of Pipeline Safety Representatives (NAPSR), an organization of state pipeline safety personnel, to discuss regulation of rural onshore gathering pipelines. In September 2003 and February 2004, PHMSA met with the NAPSR gathering pipeline committee and also gave presentations at the national NAPSR meetings in 2004 and 2005. In 2003, PHMSA discussed the potential impact of a regulation on rural liquid gathering pipelines with State officials in West Virginia and Louisiana. In April 2006, PHMSA looked at the impact of the regulation on rural gathering and low-stress pipelines in West Virginia and Ohio. PHMSA also met with State

[6] This EA considers the pipeline safety actions proposed for rural onshore gathering and low-stress pipelines. This EA does not consider other actions that operators are required to take to comply with other statutory authorities, such as the Clean Water Act.

officials at the Texas Railroad Commission in April 2002 to gather data on rural low-stress lines in Texas. Further, PHMSA talked to the Alaska Department of Environmental Conservation about low-stress lines in Alaska.

Executive Order 13211. The transportation of hazardous liquids through rural gathering lines and low-stress lines has a substantial aggregate effect on the nation's available energy supply. However, after analysis, PHMSA has determined this proposed rulemaking is not a "significant energy action" under Executive Order 13211. It is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It is possible avoiding future spills may have a positive effect on the supply of energy. We invite comments on the Energy Impact Analysis, which is available for review in the docket.

List of Subjects in 49 CFR Part 195

Carbon dioxide, Crude oil, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, PHMSA proposes to amend 49 CFR part 195 as follows:

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR1.53.

2. Amend § 195.1 to revise the section heading and to revise paragraphs (a) and (b), to redesignate paragraph (c) as paragraph (d) and to add a new paragraph (c) to read as follows:

§ 195.1 Which pipelines are covered by this part?

(a) Except for the pipelines listed in paragraph (c) of this section, this part applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities in or affecting interstate or foreign commerce, including pipeline facilities on the Outer Continental Shelf (OCS).

(b) This part applies to:

(1) Any pipeline that transports a highly volatile liquid (HVL);

(2) Transportation through any pipeline, other than a gathering line, that has maximum operating pressure (MOP) greater than 20 percent of the specified minimum yield strength;

(3) Any pipeline segment that crosses a waterway currently used for commercial navigation;

(4) Transportation of petroleum in any of the following onshore gathering pipelines:

(i) A pipeline located in a non-rural area;

(ii) A regulated rural gathering pipeline defined in § 195.11. The requirements for these lines are provided in § 195.11; or

(iii) A pipeline located in an inlet of the Gulf of Mexico. These lines are only subject to the requirements in § 195.413;

(5) Transportation of a hazardous liquid or carbon dioxide through a low-stress pipeline in a non-rural area; or

(6) Transportation of a hazardous liquid through a regulated low-stress pipeline in a rural area as defined in § 195.12. The requirements for these lines are provided in § 195.12.

(c) This part does not apply to any of the following—

(1) Transportation of a hazardous liquid transported in a gaseous state;

(2) Transportation of a hazardous liquid through a pipeline by gravity;

(3) A pipeline subject to safety regulations of the U.S. Coast Guard;

(4) A low-stress pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than 1-mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation;

(5) Transportation of hazardous liquid or carbon dioxide in an offshore pipeline in State waters where the pipeline is located upstream from the outlet flange of the following farthest downstream facility: the facility where hydrocarbons or carbon dioxide are produced or the facility where produced hydrocarbons or carbon dioxide are first separated, dehydrated, or otherwise processed;

(6) Transportation of hazardous liquid or carbon dioxide in a pipeline on the OCS where the pipeline is located upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator;

(7) A pipeline segment upstream (generally seaward) of the last valve on the last production facility on the OCS where a pipeline on the OCS is producer-operated and crosses into State waters without first connecting to a transporting operator's facility on the OCS. Safety equipment protecting PHMSA-regulated pipeline segments is not excluded. A producing operator of a segment falling within this exception may petition the Administrator, under 49 CFR § 190.9, for approval to operate under PHMSA regulations governing pipeline design, construction, operation, and maintenance.

(8) Transportation of a hazardous liquid or carbon dioxide through onshore production (including flow lines), refining, or manufacturing facilities or storage or in-plant piping systems associated with such facilities;

(9) Transportation of a hazardous liquid or carbon dioxide—

(i) By vessel, aircraft, tank truck, tank car, or other non-pipeline mode of transportation; or

(ii) Through facilities located on the grounds of a materials transportation terminal if the facilities are used exclusively to transfer hazardous liquid or carbon dioxide between non-pipeline modes of transportation or between a non-pipeline mode and a pipeline. These facilities do not include any device and associated piping that are necessary to control pressure in the pipeline under § 195.406(b); or,

(10) Transportation of carbon dioxide downstream from the applicable following point:

(i) The inlet of a compressor used in the injection of carbon dioxide for oil recovery operations, or the point where recycled carbon dioxide enters the injection system, whichever is farther upstream; or

(ii) The connection of the first branch pipeline in the production field where the pipeline transports carbon dioxide to an injection well or to a header or manifold from which a pipeline branches to an injection well.

(d) Breakout tanks subject to this part must comply with requirements that apply specifically to breakout tanks and, to the extent applicable, with requirements that apply to pipeline systems and pipeline facilities. If a conflict exists between a requirement that applies specifically to breakout tanks and a requirement that applies to pipeline systems or pipeline facilities, the requirement that applies specifically to breakout tanks prevails. Anhydrous ammonia breakout tanks need not comply with §§ 195.132(b), 195.205(b), 195.242 (c) and (d), 195.264 (b) and (e), 195.307, 195.428 (c) and (d), and 195.432 (b) and (c).

3. Amend § 195.3(c) by revising item B. (12) of the 49 CFR Reference table to read "§§ 195.12(b)(11), 195.134, 195.444."

4. Add § 195.11 and § 195.12 to read as follows:

§ 195.11 What is a regulated rural gathering line and what requirements apply?

Each operator of a *regulated rural gathering line,* as defined in paragraph (a) of this section, must comply with the

safety requirements described in paragraph (b) of this section.

(a) *Definition.* As used in this section, a *regulated rural gathering line* means an onshore gathering line in a rural area that meets all of the following criteria—

(1) Has a nominal diameter between 6⅝ inches (168 mm) and 8⅝ inches (219.1 mm);

(2) Is located in, or within ¼-mile (.40 km) of an unusually sensitive area as defined in § 195.6; and

(3) Operates at a maximum pressure established under § 195.406 corresponding to—

(i) A stress level greater than 20 percent of the specified minimum yield strength of the line pipe; or

(ii) If the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure of more than 125 psi (861 kPa) gage.

(b) *Safety requirements.* Each operator must prepare, follow, and maintain written procedures to carry out the requirements of this section. Except for the requirements in paragraphs (b)(2) and (b)(9) of this section, the safety requirements are applicable to all materials of construction.

(1) Identify all segments of regulated rural gathering pipeline within [6 months–12 months following effective date of final rule].

(2) For steel pipelines constructed, replaced, relocated, or otherwise changed after [1 year–2 years following effective date of final rule], design, install, construct, initially inspect, and initially test the pipeline according to this part, unless the pipeline is converted under § 195.5.

(3) For non-steel pipelines constructed after [1 year following effective date of final rule], notify the Administrator according to § 195.8.

(4) Beginning [6 months–12 months following effective date of final rule], comply with the reporting requirements in subpart B of this part.

(5) Establish the maximum operating pressure of the pipeline according to § 195.406 before transportation begins, or if the pipeline exists on [effective date of final rule], before [12 months–18 months following effective date of final rule].

(6) Install and maintain line markers according to § 195.410 before transportation begins, or if the pipeline exists on [effective date of final rule], before [12 months–18 months following effective date of final rule].

(7) Establish and apply a public education program according to § 195.440 before transportation begins, or if the pipeline exists on [effective date of final rule], before [12 months–18 months following effective date of final rule].

(8) Establish and apply a damage prevention program according to § 195.442 before transportation begins, or if the pipeline exists on [effective date of final rule], before [12 months–18 months following effective date of final rule].

(9) For steel pipelines, control and remediate corrosion according to subpart H of this part, except corrosion control is not required for pipelines existing on [effective date of final rule] before [2 years–3 years following effective date of final rule]. In addition to the requirements in subpart H, continuously monitor to identify and remediate any changes in operating conditions that could necessitate cleaning the lines and accelerating the corrosion control program.

(10) Demonstrate compliance with the Operator Qualification program requirements in subpart G of this part by describing the processes used to determine the qualification of persons performing operations and maintenance tasks. These processes must be established before transportation begins or if the pipeline exists on [effective date of final rule], before [1 year–2 years following the effective date of the final rule].

(c) *New unusually sensitive areas.* If, after [effective date of final rule], a new unusually sensitive area is identified and a segment of pipeline becomes regulated as a result, the operator must implement the requirements in paragraphs (b)(2) through (b)(10) of this section within [six months–one year] for the affected segment.

(d) *Records.* An operator must maintain the segment identification records required in paragraph (b)(1) of this section for the life of the pipe. For the requirements in paragraphs (b)(2) through (b)(10) of this section, an operator must maintain the records necessary to demonstrate compliance with each requirement according to the record retention requirements of the referenced section or subpart.

§ 195.12 Which low-stress lines in rural areas are regulated and what requirements apply?

Each operator of a *regulated low-stress line* in a rural area, as defined in paragraph (a) of this section, must comply with the safety requirements described in paragraph (b) of this section.

(a) *Definition.* As used in this section, a *regulated low-stress line in a rural area* means an onshore line in a rural area that meets all of the following criteria:

(1) Has a nominal diameter of 8⅝ inches (219.1 mm) or more;

(2) Is located in, or within ¼-mile (.40 km) of, an unusually sensitive area as defined in § 195.6; and

(3) Operates at a maximum pressure established under § 195.406 corresponding to—

(i) A stress level equal to or less than 20 percent of the specified minimum yield strength of the line pipe; or

(ii) If the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage.

(b) *Safety requirements.* Each operator must prepare, follow, and maintain written procedures to carry out the requirements of this section. Except for the requirements in paragraphs (b)(2) and (b)(8) of this section, the safety requirements in this section are applicable to all materials of construction.

(1) Identify all segments of regulated low-stress pipeline in rural locations before [6 months–12 months following effective date of final rule].

(2) For steel pipelines constructed, replaced, relocated, or otherwise changed after [1 year–2 years following effective date of final rule], design, install, construct, initially inspect, and initially test the pipeline according to this part, unless the pipeline is converted under § 195.5.

(3) Beginning [6 months–12 months following effective date of final rule], comply with the reporting requirements in subpart B of this part.

(4) Establish the maximum operating pressure of the pipeline according to § 195.406 before transportation begins, or if the pipeline exists on [effective date of final rule], before [12 months–18 months following effective date of final rule].

(5) Install and maintain line markers according to § 195.410 before transportation begins, or if the pipeline exists on [effective date of final rule], before [12 months–18 months following effective date of final rule]

(6) Establish and apply a public education program according to § 195.440 before transportation begins, or if the pipeline exists on [effective date of final rule], before [12 months–18 months following effective date of final rule].

(7) Establish and apply a damage prevention program according to § 195.442 before transportation begins, or if the pipeline exists on [effective date of final rule], before [12 months–18 months following effective date of final rule].

(8) For steel pipelines, control and remediate corrosion according to

subpart H of this part, except corrosion control is not required for pipelines existing on [effective date of final rule] before [2 years–3 years following effective date of final rule]. In addition to the requirements in subpart H, continuously monitor to identify and remediate any changes in operating conditions that could necessitate cleaning the lines and accelerating the corrosion control program.

(9) Demonstrate compliance with the Operator Qualification program requirements in subpart G of this part by describing the processes used to determine the qualification of persons performing operations and maintenance tasks. These processes must be established before transportation begins or if the pipeline exists on [effective date of final rule], before [1 year–2 years following the effective date of the final rule].

(10) Establish and apply a program to assess the integrity of the regulated pipeline segments to determine and remediate any condition presenting a threat to the integrity of these segments before [12 months–24 months following effective date of final rule]. These conditions are not limited to those caused by corrosion and third-party damage. An operator may use in-line inspection tools, pressure testing conducted in accordance with subpart E of this part, or other technology the operator demonstrates can provide an equivalent understanding about the condition of line pipe. An operator must prioritize the regulated rural low-stress segments for the integrity assessment and conduct the integrity assessment of at least 50 percent of these segments before [36 months–48 months following effective date of final rule], and complete the assessment for all regulated segments before [60 months–84 months following effective date of final rule]. An operator must establish reassessment intervals for continually assessing the pipe segments. The intervals must be as frequent as necessary to ensure the continued integrity of each pipe segment, but may not exceed 68 months. An operator may be able to justify an engineering basis for a longer assessment interval on a segment of line pipe. The justification must be supported by a reliable engineering evaluation.

(11) Establish and apply a program, based on API 1130, or other appropriate method suitable for the commodity being transported to detect leaks on the regulated segments before [24 months–36 months following effective date of the final rule]. The leak detection method cannot be based solely on field personnel's visual and olfactory senses. The program must evaluate the capability of the leak detection means. The evaluation must consider the following factors:

(i) Length and diameter of the pipeline;

(ii) Product transported;

(iii) Timeliness of detection capability; and

(iv) Proximity of response personnel and equipment.

(c) *New unusually sensitive areas.* If, after [effective date of final rule], a new unusually sensitive area is identified and a segment of pipeline becomes regulated as a result, the operator must take the following actions:

(1) Implement the requirements in paragraphs (b)(2) through (b)(9) and (b)(11) of this section within six months–one year from the date the area is identified; and

(2) Complete the assessment required by paragraph (b)(10) of this section within two years–three years from the date the area is identified.

(d) *Records.* An operator must maintain the segment identification records required in paragraph (b)(1) of this section for the life of the pipe. For the requirements in paragraphs (b)(2) through (b)(9) of this section, an operator must maintain the records necessary to demonstrate compliance with each requirement according to the record retention requirements of the referenced section or subpart. For the integrity assessment program required in paragraph (b)(10) and the leak detection program required in paragraph (b)(11), an operator must maintain the records for the life of the pipe.

5. Amend §§ 195.555, 195.565, 195.573(d), and 195.579(d) by removing "§ 195.402(c)(3)" and adding, in its place, "§§ 195.11(b)(9), 195.12(b)(8) or § 195.402(c)(3)."

6. Amend §§ 195.557(a) and 195.563(a) by removing "§ 195.401(c)" and adding in its place, "§§ 195.11(b)(9), 195.12((b)(8)) or § 195.401(c)."

Issued in Washington, DC, on August 31, 2006.

Jeffrey D. Wiese,

Acting Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 06–7438 Filed 8–31–06; 11:46 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060823223–6223–01; I.D. 072706B]

RIN 0648–AT63

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Tilefish Fishery; Proposed Total Allowable Landings

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a change to the annual total allowable landings (TAL) for the tilefish fishery. The Mid-Atlantic Fishery Management Council (Council) met in May 2006 and recommended an increase in the TAL from 905 mt to 987 mt. This recommendation is, in part, a result of positive findings from the 2005 tilefish stock assessment that concluded that the tilefish stock is not overfished and overfishing is not occurring. This action complies with the Fishery Management Plan for the Tilefish Fishery (FMP).

DATES: Comments must be received no later than 5 p.m., eastern standard time, on September 21, 2006.

ADDRESSES: Copies of supporting documents, including the Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. A copy of the RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/nero/regs/com.html.*

Written comments on the proposed specifications may be submitted by any of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope: "Comments on Tilefish Proposed Specifications."
- Fax: (978) 281–9135.
- E-mail: *0648AT63@noaa.gov.* Include in the subject line of the e-mail the following document identifier: "Comments on Tilefish Proposed Specifications."

• Federal e-Rulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, 978–281–9220.

SUPPLEMENTARY INFORMATION: Regulations implementing the FMP appear at 50 CFR part 648, subparts A and N. The FMP (section 1.2.1.2) states that, after a "benchmark" stock assessment, conducted at the Northeast Fisheries Science Center (NEFSC) sponsored stock assessment workshop (SAW), and subsequent review by the stock assessment review committee (SARC), from which the biological reference points for tilefish could change, a change in the TAL may be warranted. The 41st SAW met in June 2005, assessed the tilefish stock, and concluded that the stock is not overfished and overfishing is not occurring. Fishing mortality in 2004 was estimated to be 87 percent of F_{msy}, and total biomass in 2005 was estimated to be 72 percent of B_{msy}. Stock biomass in 2005 was above that projected for 2005 in the 1998 assessment (59 percent of B_{msy}). However, the SAW also concluded that high variability exists in the terminal year ratio estimates and they were considered too uncertain to form the basis for evaluating likely biomass recovery schedules relative to the biomass level that would produce maximum sustainable yield (B_{msy}) under various TAL strategies.

As a result of the findings from the 41st SAW, the Council convened the Tilefish Monitoring Committee in April 2006 to consider the results of the stock assessment and make recommendations to the Council's Tilefish Committee. At the Council's May 3, 2006, meeting the Tilefish Monitoring Committee recommended to the Council's Tilefish Committee that a slight increase in the TAL was justified. Based on this recommendation, the Council recommended to NMFS that the annual TAL be increased from 905 mt to 987 mt live (whole) weight, beginning with the 2007 fishing year, which starts November 1, 2006.

The FMP established a constant harvest strategy, with a 50–percent probability of achieving the B_{msy} target, over a 10–year rebuilding period. Thus, the proposed TAL, if implemented, would remain in place through the remainder of the rebuilding period (ending October 31, 2011) unless otherwise superseded by an amendment to the FMP, or unless the results of the next tilefish stock assessment (currently scheduled for fall 2008 or spring 2009) warrant other action. The proposed 987 mt (2.175 million lb) TAL represents a 9–percent increase above the current 905 mt (1.995 million lb) TAL. In evaluating the proposed TAL, the Tilefish Monitoring Committee considered that the fishery has been operating at, or near, this level since the implementation of the FMP. This was primarily a result of an accounting error by which the quota was erroneously monitored by landed (gutted) weight instead of live (whole) weight as specified in the FMP. This error was corrected in May 2005, at which time the conversion factor of 1.09 was applied to the landed weight to determine the amount of quota harvested.

The percentage distribution of the TAL to the four tilefish permit categories would remain unchanged under this rule. The FMP dictates that the TAL be divided between the three limited access tilefish permit categories after the TAL is reduced by 5–percent to account for incidental tilefish landings (open-access incidental permit category) as follows: Sixty-six percent to Full-time Tier 1; 15 percent to Full-time Tier 2; and 19 percent to Part-time vessels. The allocation of the proposed TAL increase to the tilefish permit categories are presented in Table 1. These quotas may be adjusted by the Regional Administrator due to quota overages that occur in the previous fishing year.

TABLE 1. PROPOSED TILEFISH TOTAL ALLOWABLE LANDINGS BY PERMIT CATGORY

Permit Category	Current TAL 905 mt (1.995 million lb)		Proposed TAL 987 mt (2.175 million lb)	
	Lb	Kg[1]	Lb	Kg[1]
Full-time Tier 1 (A)	1,250,980	567,435	1,364,329	618,849
Full-time Tier 2 (B)	284,313	128,962	310,075	140,648
Part-time (C)	360,130	163,352	392,761	178,153
Incidental Catch	99,759	45,250	108,798	49,350

[1] Kg are converted from lb, and may not necessarily add exactly due to rounding.

Classification

This action is authorized by 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 603, an IRFA has been prepared that describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule is found in the preamble of this proposed rule. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule. This action proposes to increase the tilefish TAL from 905 mt to 987 mt for the remainder of the FMP rebuilding period, which ends October 31, 2011.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply.

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding $4.0 million. No firms participating in the tilefish fishery reported gross receipts exceeding $4.0 million and are thus all considered small entities. Total ex-vessel value for the entire tilefish fishery ranged from $2.5 to $4.9 million over the 1996 to 2005 period. A total of 31 vessels are eligible to participate in the directed tilefish limited access fishery. Approximately 2,000 vessels are issued the open access tilefish Incidental Catch permit on an annual basis. In 2005, all permitted vessels in the Full-time Tier 1 permit category landed tilefish, while only 40 percent (2 vessels) of the permitted vessels in the Full-time Tier 2 category and 35 percent (8 vessels) of the permitted vessels in the part-time category landed tilefish that year. In addition, approximately 142 vessels landed tilefish under the Incidental Catch permit category in 2005. Thus, the vast majority of the tilefish landings in 2005 (approximately 90 percent) came from vessels permitted to participate in the limited access fishery.

Economic Impacts of this Proposed Action

The proposed 9–percent quota increase could have a small benefit to the fishing industry due to the increased TAL and thus, the additional opportunity to harvest tilefish. In general, there is not a direct relationship between the amount of fish landed and the price, but if one did assume a direct relationship, then the 2005 average price per pound of $2.48 would be worth an additional $448,332 per year for the 180,779 lb (82 mt) increase in tilefish quota proposed under this action. Using the 2005 price per pound, this could potentially amount to an additional $2 million over the 5 years remaining in the rebuilding period. However, because of the accounting error that resulted in the quota being monitored as landed (gutted) weight rather than live (whole) weight, as the FMP specified between November 1, 2001, and May 2005, the expected revenue increase would only be applicable for the period after the accounting error was corrected. The correction of the accounting error equates to a 9–percent reduction in available tilefish quota.

Economic Impacts of Alternatives to the Proposed Action

The Council analyzed two tilefish quota alternatives in addition to the preferred alternative. The alternatives are as follows: The preferred alternative of a 9–percent increase in TAL; a second alternative representing a 5–percent increase in TAL; and a third alternative representing the no-action alternative (status quo). The second alterative could have a small benefit to the fishing industry, as potentially as much as 99,208 lb (45 mt) more landings of tilefish could occur due to the increase in quota. As stated previously, there is not a direct relationship between the amount of fish landed and the price, but if one did assume a direct relationship, then the 2005 average price per pound of $2.48 would be worth an additional $248,000 per year for the additional 99,208 lb (45 mt) increase in the quota under this alternative. Using the 2005 price per pound, this would represent a potential $1.24–million increase in ex-vessel price over the 5 years remaining in the rebuilding period. This increase would be applicable for the period after the accounting error was corrected in May 2005.

The third alternative would maintain the status quo (since May 2005) quota for the remainder of the stock rebuilding period. Implementation of the third alternative would be expected to maintain status quo conditions for rebuilding the resource and result in no changes to tilefish fishing revenues since May 2005. However, if viewed over the entire period since the implementation of the FMP (November 1, 2001), the tilefish industry average revenues could decline under the status quo alternative, since they would no longer be permitted to harvest at the level experienced prior to the correction of the accounting error.

Reporting and Recordkeeping Requirements

This proposed rule would not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the costs of compliance would remain unchanged.

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

Dated: August 31, 2006.

Samuel D. Rauch III,

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

[FR Doc. E6–14712 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 082406C]

RIN 0648–AQ87

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Herring Fishery; Amendment 1 to the Atlantic Herring Fishery Management Plan

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

ACTION: Notice of Availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 1 to the Atlantic Herring Fishery Management Plan (FMP) (Amendment 1), incorporating the draft Final Supplemental Environmental Impact Statement (FSEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), for Secretarial review and is requesting comments from the public. The proposed measures include: A limited access program; an open access incidental catch permit; a change in the management area boundaries; establishment of a purse seine/fixed gear-only area; establishment of a Maximum Sustainable Yield (MSY) proxy; an approach to determining the distribution of area-specific total allowable catches (TACs); a multi-year specifications process; a research quota set-aside for herring-related research; set-asides for fixed gear fisheries; a change in the midwater trawl gear definition; and additional measures that could be implemented through the framework adjustment process. The intent of this action is to provide efficient management of the Atlantic herring fishery and to meet conservation objectives.

DATES: Comments must be received on or before November 6, 2006.

ADDRESSES: Written comments on the proposed rule may be sent by any of the following methods:

Mail to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments Herring Amendment 1";

Fax to Patricia A. Kurkul (978) 281–9135;

E-mail to the following address: *HerrAmend1@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments Herring Amendment 1.

Electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Copies of Amendment 1, the draft FSEIS, RIR, and the IRFA are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, 978–281–9259, fax 978–281–9135, e-mail *eric.dolin@noaa.gov*.

SUPPLEMENTARY INFORMATION: The notice of availability for the Draft Supplemental Environmental Impact Statement (DSEIS), which analyzed the impacts of all of the measures under consideration in Amendment 1 and Framework 43 to the Northeast Multispecies Fishery Management Plan (Northeast Multispecies FMP), was published on September 9, 2005 (70 FR 53657), with public comment accepted through October 24, 2005. Public hearings were held in October 2005, in six locations from Maine to New Jersey.

At its January 31–February 2, 2006, meeting, the Council voted to adopt Amendment 1 for submission to NMFS, and submitted the document and associated analyses on May 3, 2006.

The primary purpose of Amendment 1 is to modify the management program for the Atlantic herring fishery by implementing a limited access program to better match the capacity of the fleet to the resource. The Amendment is also intended to modify other management measures so that the Atlantic herring resource is managed more efficiently and sustainably.

In July 1999, the Council voted to develop a limited or controlled access program for the herring fishery, and NMFS, at the request of the Council, established September 16, 1999 (FR 64 50266), as a control date for the Atlantic herring fishery in Federal waters. Scoping meetings for an amendment to the FMP were conducted in February 2000, shortly after completion of the FMP, with public hearings taking place during that month in Maine, Massachusetts, Rhode Island, and New Jersey. In April 2003, the Council re-initiated scoping, holding public hearings in April and May of that year in Maine, Massachusetts, and New Jersey.

During the development of Amendment 1, both as a result of issues raised by the Council and by the public during scoping, a variety of elements were added to Amendment 1, all of which are intended to improve the management of the fishery and contribute to the sustainability of the stock. These include an open access incidental catch permit; a change in the management area boundaries; establishment of a purse seine/fixed gear-only area; establishment of an MSY proxy; an approach to determining the distribution of area-specific TACs; a multi-year specifications process; a research quota set-aside for herring-related research; a set-aside for fixed gear fisheries; measures to address bycatch of multispecies in the herring fishery; a change in the midwater trawl gear definition; and additional measures that could be implemented through the framework adjustment process.

At its final meeting for Amendment 1, the Council separated the measures to address bycatch in the herring fishery from Amendment 1, and agreed to submit these measures separately as Framework 43 to the NE Multispecies FMP. The measures contained in Framework 43 were included in the DSEIS and public hearing document for Amendment 1 to the Atlantic Herring FMP (Amendment 1). The Council voted on February 2, 2006, to adopt the measures in Amendment 1 and Framework 43, but to submit Framework 43 in advance of Amendment 1 in order to establish measures for the fishery as soon as possible during the 2006 summer fishing season. The final rule for Framework 43 was published in the **Federal Register** on August 15, 2006 (71 FR 46871).

Public comments are being solicited on Amendment 1 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 1 may be published in the **Federal Register** for public comment, following NMFS's evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 1 to be considered in the approval/disapproval decision on the amendment. All comments received by November 6, 2006, whether specifically directed to Amendment 1 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 1. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: August 30, 2006.

James P. Burgess,

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

[FR Doc. E6–14662 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 172
Wednesday, September 6, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals for Woody Biomass Utilization Grant—Forest Restoration Activities on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Request for proposals.

SUMMARY: The USDA Forest Service, State and Private Forestry, Technology Marketing Unit, located at the Forest Products Laboratory, requests proposals for forest product projects that increase the use of woody biomass from national forest system lands. The woody biomass utilization grant program is intended to help improve forest restoration activities by using and creating markets for small-diameter material and low-valued trees removed from forest restoration activities, such as reducing hazardous fuels, handling insect and diseased conditions, or treating forestlands impacted by catastrophic weather events. These funds are targeted to help communities, entrepreneurs, and others turn residues from forest restoration activities into marketable forest products and/or energy products.

DATES: *Pre-application Deadline:* Close of business November 3, 2006.

Full application Deadline: Close of business February 2, 2007.

ADDRESSES: All pre- and full-application packages must be sent to the following address: ATTN: Shawn Lacina, Grants and Agreements Specialist, Forest Products Laboratory, 1 Gifford Pinchot Dr., Madison, WI 53726–2398. Detailed information regarding what to include in the pre- and full-application, definitions of terms, eligibility and federal restrictions are available at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants). Paper copies of the information are also available by contacting the USDA Forest Service, S&PF Technology Marketing Unit, Madison, Wisconsin.

FOR FURTHER INFORMATION CONTACT: For questions regarding contract and agreement questions, contact Shawn Lacina, Grants and Agreements Specialist, (608) 231–9282, *slacina@fs.fed.us,* for program and technical questions, contact Susan LeVan, Program Manager, (608) 231–9504, *slevan@fs.fed.us.*

SUPPLEMENTARY INFORMATION: To meet the shared goals of Public Law 109–190 the Energy Policy Act of 2005, and the anticipated Public Law governing the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2007, the agency is requesting proposals to address the nationwide challenge in dealing with low-valued material removed from hazardous fuel reduction activities, restoration of insect and diseased conditions or catastrophic weather events. The Woody Biomass Utilization Grant Program has a pre-application submission process, and upon notification, selected pre-applicants will be asked to submit a full application. Goals of the grant program are the following:

- Help reduce forest management costs by increasing value of biomass and other forest products generated from forest restoration activities.
- Create incentives and/or reduce business risk for increased use of biomass from national forestlands (must include National Forest System lands, however, may also include other lands such as, BLM, Tribal, State, local, and private).
- Institute projects that target and help remove economic and market barriers to using small-diameter trees and woody biomass.
- Require a Forest Service letter of support for the woody biomass grant project on National Forest System lands.

Woody Biomass Grants Program

1. Eligibility Information

a. Eligible Applicants

Eligible applicants are State, local, and tribal governments, school districts, communities, non-profit organizations, businesses, companies, corporations, or special purpose districts, *e.g.*, public utilities districts, fire districts, conservation districts, or ports. Only one application per business or organization will be accepted. Construction projects involving a permanent building or infrastructure item, such as roads, are not allowed with federal funds; however construction funds can be part of the non-federal cost share.

b. Cost Sharing (Matching Requirement)

Applicants must demonstrate at least a 20% match from non-Federal sources, which can include cash or in-kind contributions.

2. DUNS Number

All applicants must include a Dun and Bradstreet (D&B), Data Universal Numbering System (DUNS) number in their full application. For the purpose of this requirement, the applicant is the entity that meets the eligibility criteria and has the legal authority to apply for an award. For assistance in obtaining a DUNS number at no cost, call the DUNS number request line (1–866–705–5711) or register on-line at *https://eupdate.dnb.com/requestoptions/government/ccrreg/.* By submission of an application, the applicant acknowledges the requirement that prospective awardees shall be registered in the Central Contractor Registration (CCR) database prior to award, during performance, and through final payment of any grant resulting from this solicitation. Further information can be found at *http://www.ccr.gov.*

3. Award Information

At least $4 million is available for granting under this program. Individual grants will not be less than $50,000 or more than $250,000. Funds are presently not available for this grant program. The Government's obligation under this program is contingent upon the availability of 2007 appropriated funds from which payment for grant purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Grants Officer for this program, and until the Cooperator receives notice of such availability, to be confirmed in writing by the Grants Officer. Successful applicants will be announced by March 5, 2007. The maximum length of the award is 3 years from the date of award. Written, quarterly financial and semi-annual performance reports will be required. Applicants should be aware that the grant funds are regarded as taxable

income and a form 1099 will be sent by the Forest Service to the IRS.

4. Application Review Process

A two-step technical evaluation process is used for applications submitted under this solicitation. The first step requires the applicant to submit a preliminary application (pre-application). Pre-applications are evaluated on the evaluation criteria discussed in Section 5.

A review panel of technical experts from Federal agencies judges the pre-applications. Panel members independently review the pre-applications according to the evaluation criteria and point system. A total of 100 points is possible. As a result of this preliminary review, successful pre-applications are invited to submit a full-application package. Unsuccessful pre-applicants are removed from further consideration for funding under this solicitation. In either case, a letter of notification is provided to each applicant.

The second step requires the applicant to submit a full-application package, which is evaluated based on the same evaluation criteria as the preliminary application. The full-application package is evaluated for technical and financial feasibility. The reviewers discuss, rank, and make recommendations to Executive Steering Committee of Senior Federal officials.

5. Evaluation Criteria and Point System

a. Impact on National Forest System Lands Forest Restoration Activities: Total Points 40

- Condition of the forestlands proposed for the project, such as Fire Regime Condition Class (*http://www.frcc.gov*), insect and disease risk conditions, or degraded forestlands due to catastrophic weather events.
- Direct, tangible benefits with and without the grant (*e.g.*, increased acres treated from forest restoration activities, increased value of raw material removed from forest restoration activities, and reduced Forest Service's cost per acre).
- Indirect, intangible benefit (such as air quality benefits, water quality benefits, socio-economic impacts, wildlife habitat, and watershed improvements).
- Opportunities created for using woody biomass material around National Forest System lands in locations where no capacity exists.

b. Technical Approach Work Plan: Total Points 25

- Technical feasibility of the proposed work.
- Adequacy and completeness of the proposed tasks.
- Likelihood of meeting project objectives.
- Reasonableness of time schedule.
- Identified deliverables/tasks.
- Timeliness—timeframe of the project.
- Evaluation and monitoring plan.

c. Financial Feasibility: Total Points 25

- Realistic budget and timeframe.
- Thorough financial documentation (*see* description of required documentation under financial feasibility, Section 7. c.).
- Level of matching funds for the grant.

d. Qualifications and Experience of Applicant: Total Points 10

- Experience, capabilities (technical and managerial).
- Demonstrated capacity.

If there are no technical or financial problems for the project, and there is significant impact on reducing the Forest Service's cost per acre, full points are given. If there are minor deficiencies, which could limit success, midway points are given. If there are major deficiencies, which could render the project unsuccessful, minimum points are given. Further scoring criteria can be found at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants). Full-application packages that do not submit ALL required financial information will be disqualified.

6. Pre-Application Information

a. Pre-Application Submission

Pre-applications are required. Specific content and submission requirements for the pre-application are as follows: Each submittal must be composed of three paper copies (single-sided) of the pre-application. Paper copies of the pre-application must be on 8.5-by 11-inch plain white paper with a minimum font size of 11 letters per inch. Top, bottom, and side margins must be no less than three-quarters of an inch. All pages must be clearly numbered. The paper copies of the application package should be stapled with a single staple at the upper left-hand corner.

b. Pre-Application Content

Assemble information in the following order: cover page, project summary, project narrative, statement of need, project coordinator(s) and partner(s), goals and objectives, technical approach work plan, impact on National Forest System forest restoration treatments, evaluation and monitoring plan, budget justification narrative, budget, and appendices. The project narrative should provide a clear description of the work to be performed and its impact on National Forest System lands. It should address the technical approach work plan under criteria 2 in Section 5. The project narrative is limited to 5 pages, excluding cover page, budget justification, budget, or appendices.

The discussion of the impact on National Forest System lands is a critical component because these proposals are aimed at helping the Forest Service increase the number of acres treated and decrease the cost per acre for those National Forest System lands that are at risk due to hazardous fuel buildup, insects and diseases, or catastrophic weather events. Applicants should describe qualitatively and quantitatively how the project would decrease Forest Service treatment costs and/or increase the price one might offer for the woody biomass. Specifically, proposals should address the following:

- Condition of the forest or grassland, such as providing the Fire Regime Condition Class (*http://www.frcc.gov*), the insect and disease risk, or any catastrophic weather events and the consequences of the National Forest System not being able to do treatments because of the cost.
- What Forest Service is currently doing with material removed from forest restoration activities.
- What would be done with this material if grant is awarded?
- Anticipated outcomes and measures of success.
- Documentation of costs and benefits of project as a result of the award (*see* project feasibility discussion at *http://www.fpl.fs.fed.us/tmu* under Woody Biomass Grants).
- Documentation of intangible benefits. Examples of tangible and intangible benefits are listed on the Technology Marketing Unit's Web site at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants).
- Long-Term Benefits of Project: Applicant should address the length of time the benefits and impacts are anticipated (*e.g.*, project will have long-term consequences, such as equipment improvements, or a one-time benefit, such as a subsidy.)
- Expansion capability: Does the project have the potential to expand the application to additional forest treatment areas or to use more of the wood from treatments for higher valued uses?

A full description of each content item can be obtained from the Technology Marketing Unit's Web site at *http://www.fpl.fs.fed.us/tmu* (under

Woody Biomass Grants), or by calling the telephone number in the **FOR FURTHER INFORMATION CONTACT** section, or by writing to the address in the **ADDRESSES** section of this notice.

c. Pre-Application Delivery

Pre-applications must be postmarked by November 3, 2006 and received no later than 5 p.m. Central Standard Time on November 10, 2006, by Shawn Lacina at the Forest Products Laboratory. Hand-delivered, e-mail, or fax applications will not be accepted. *No exceptions allowed.* Please send pre-applications to the address listed in the **ADDRESSES** section of this notice.

7. Full-Application Information

USDA Forest Service will request full applications only from those applicants selected in the pre-application process.

a. Full-Application Submission

Specific content and submission requirements for the full application are as follows: Each submittal must be composed of three paper copies (single-sided) of the full application. Paper copies of the full application must be on 8.5- by 11-inch plain white paper with a minimum font size of 11 letters per inch. Top, bottom, and side margins must be no less than three-quarters of an inch. All pages must be clearly numbered. The paper copies of the application package should be stapled with a single staple at the upper left-hand corner. Other bindings will not be accepted.

b. Full-Application Content

Assemble information in the following order: Cover page, project summary, project narrative, statement of need, project coordinator(s) and partner(s), goals and objectives, technical approach work plan, impact on National Forest System forest restoration activities, environmental documentation, project work plan and timeline, social impacts, evaluation and monitoring plan, equipment description, budget justification narrative, budget, financial feasibility, and appendices. The project narrative should provide a clear description of the work to be performed, how it will be accomplished, and its impact on National Forest System lands. It should address the technical approach work plan under criteria 2 listed in Section 5. The project narrative is limited to a total of 10 pages excluding cover page, budget justification, budget, appendices and financial documentation.

c. Detailed Financial Information

Detailed financial information is requested to assess the potential and the capability of the applicant. All financial information remains confidential and is not accessible under the Freedom of Information Act. If the applicant has questions about how confidential information is handled they should contact Shawn Lacina at *slacina@fs.fed.us.* The financial information should provide a general overview of historical and projected (pro forma) financial performance. Standard accounting principles should be used for developing the required financial information. Strong applications have benefited from the use of a certified accountant to develop this information. Applicants should refer to the Technology Marketing Unit's Web site at *http://www.fpl.fs.fed.us/tmu* (under Woody Biomass Grants) for the financial information requirements, as well as Web sites for standard financial templates.

d. Full-Application Delivery

Full applications must be postmarked by February 2, 2007, and received no later than 5 p.m. Central Standard Time on February 9, 2007, by Shawn Lacina at the Forest Products Laboratory. Hand-delivered, e-mail, or fax applications will not be accepted. *No exceptions allowed.* Please send full-applications to the address listed in the **ADDRESSES** section of this notice.

8. Appendices

The following information must be included in the appendix of the pre-application and the full-application package:

a. Letter of Support and Biomass Availability From Local USDA Forest Service District Ranger or Forest Supervisor

This letter must describe the status of National Environmental Policy Act (NEPA), acres, timeframes, available volumes, and opportunities for applicant to access these volumes. These letters should be submitted with both the pre-application and full-application.

b. Letters of Support From Partners, Individuals, or Organizations

Letters of support should be included in an appendix and are intended to display the degree of collaboration occurring between the different entities engaged in the project. These letters must include commitments of cash or in-kind services from all partners and must support the amounts listed in the budget. Each letter of support is limited to one page in length.

c. Key Personnel Qualifications

Qualifications of the project manager and key personnel should be included in an appendix. Qualifications are limited to two pages in length and should contain the following: Resume, biographical sketch, references, and demonstrated ability to manage the grant.

Dated: August 30, 2006.

James E. Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. E6–14707 Filed 9–5–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–707

Notice of Extension of Deadline for the Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1757 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 11, 2006, the Department of Commerce (the Department) published the preliminary results of the 2004–2005 administrative review of the antidumping duty order covering Asahi Glass Fluoropolymers, Ltd. See *Granular Polytetrafluoroethylene Resin From Japan: Preliminary Results of Antidumping Duty Administration Review*, 71 FR 27459 (May 11, 2006). The final results are currently due September 8, 2006.

Extension of Time Limit for Final Results

The Tariff Act of 1930, as amended (the Act), provides at section 751(a)(3)(A) that the Department will issue the final results of an administrative review of an antidumping duty order within 120 days after the date on which the

preliminary results were published. The Act provides further that, if the Department determines that it is not practicable to complete the review within this time period, the Department may extend the 120–day period to 180 days.

Due to the complexity of the level of trade issue in this review, the Department needs additional time to conduct its analysis. Therefore, we are extending the deadline for issuing the final results of this review by an additional 45 days until October 23, 2006, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: August 29, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–14726 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–357–812)

Honey From Argentina: Extension of Time Limit for Preliminary Results of Administrative Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department of Commerce (the Department) published a notice of opportunity to request administrative review of the antidumping duty order on, *inter alia*, Honey from Argentina. *See Notice of Opportunity to Request Administrative Review*, 70 FR 65883 (November 1, 2005). On December 27, 28, and 30, 2005, the Department received timely requests to conduct an administrative review of honey from Argentina. On February 1, 2006, the Department published a notice of initiation of an antidumping duty review for the December 1, 2004, through November 30, 2005 period of review. *See Initiation of Antidumping Duty Reviews*, 71 FR 5241 (February 1, 2006). The preliminary results for this administrative review are currently due no later than September 5, 2006.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Tariff Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to conduct a sales–below-cost investigation in this administrative review. The time needed to analyze the respondents' cost of production data and to develop fully the record in this review makes it impracticable to complete the preliminary results of this review within the originally anticipated time limit. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than December 20, 2006, which is 354 days from the last day of the anniversary month of the order on honey from Argentina. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act.

Dated: August 29, 2006.

Stephen Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–14723 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–357–812)

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is partially rescinding its administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2004, to November 30, 2005, with respect to two companies, Nexco S.A and HoneyMax S.A.

EFFECTIVE DATE: September 6, 2006.

FOR FURTHER INFORMATION CONTACT: David Cordell at (202) 482–0408 (Nexco S.A.), Tyler Weinhold at (202) 482–1121 (HoneyMax S.A), or Robert James at (202) 482–0649, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2005, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on honey from Argentina. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005). In response, on December 30, 2005, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2004, through November 30, 2005. The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by 42 Argentine producers/exporters. In addition, the Department received requests for review from four Argentine exporters included in the petitioners' request. On January 6, 2006, petitioners withdrew their request with respect to 23 companies listed in their original request.

On February 1, 2006, the Department initiated a review on the remaining 19 companies for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006).

On March 10, 2006, petitioners withdrew their requests for review of an additional twelve respondents. Accordingly, on April 10, 2006, the Department published a notice of partial rescission of review in response to petitioners' withdrawal of their requests covering twelve companies. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty*

Administrative Review, 71 FR 18066 (April 10, 2006).

On August, 4, 2006, petitioners withdrew their request for an administrative review of Nexco S.A. On August 21, 2006 petitioners and HoneyMax S.A. submitted letters withdrawing their requests for an administrative review of HoneyMax S.A.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. Although petitioners withdrew their request with regard to Nexco S.A. after the 90-day deadline, the Department finds it reasonable to extend the withdrawal deadline because the Department has not yet devoted significant time or resources to this review, and petitioners were the only party to request a review. Further, we find petitioners' withdrawal does not constitute an abuse of our procedures. Similarly, although both petitioners and HoneyMax S.A. withdrew their requests with regard to HoneyMax S.A. after the 90-day deadline, the Department finds it reasonable to extend the withdrawal deadline because the Department has not yet devoted any significant time and resources to this review. *See, e.g., Persulfates from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review*, 71 FR 13810 (March 17, 2006).

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for Nexco S.A. and HoneyMax S.A. at the cash deposit rates in effect on the date of entry for entries during the period December 1, 2004, to November 30, 2005.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 29, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–14724 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

International Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and call for applications for the International Buyer Program for the period January 1, 2008 through December 31, 2008.

SUMMARY: This notice sets forth objectives, procedures and application review criteria associated with support for domestic trade shows by the International Buyer Program of the United States and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce (DOC). This announcement covers selection for International Buyer Program participation for Calendar Year 2008 (January 1, 2008 through December 31, 2008).

The International Buyer Program (IBP) was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. firms interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the United States and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in more than 70 countries representing the United States' major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices. The Department expects to select approximately 35 shows for the January 1, 2008 through December 31, 2008 period from among applicants to the program. Shows selected for the International Buyer Program will provide a venue for U.S. firms interested in expanding their sales into international markets. Successful show organizer applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC. The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities are to be undertaken by DOC as part of the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. The responsibilities to be undertaken by DOC will be carried out by the Commercial Service, the lead agency for this program.

DATES: Applications must be received by 5 p.m. local time November 6, 2006. To avoid delays, applications should be sent via express mail due to the irradiation of regular mail addressed to the DOC Herbert Clark Hoover Building (HCHB) location.

ADDRESSES: International Buyer Program, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., HCHB 2110, Washington, DC 20230. Telephone: (202) 482–3334.

FOR FURTHER INFORMATION CONTACT: Joseph J. English, Acting Program Manager, International Buyer Program, HCHB 2110, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230. Telephone (202) 482–3334; Fax: (202) 482–0115; E-mail: *Josesph.English@mail.doc.gov.*

SUPPLEMENTARY INFORMATION: The Commercial Service is accepting

applications for the International Buyer Program for events taking place between January 1, 2008, and December 31, 2008.

Under the IBP, the Commercial Service seeks to bring together international buyers with U.S. firms by selecting and promoting in international markets U.S. domestic trade shows covering industries with high export potential. Selection of a trade show is valid for one event, *i.e.*, a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. Even if the event occurs more than once in the 12-month period covered by this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service will select approximately 35 events for support between January 1, 2008 and December 31, 2008. The Commercial Service will select those events that, in its judgment, most clearly meet the Commercial Service's statutory mandate to promote U.S. exports, especially those of small- and medium-sized enterprises, and that best meet the selection criteria articulated below.

The Commercial Service selects trade shows to be International Buyer Program partners that it determines to be leading international trade shows appropriate for participation by U.S. exporting firms and for promotion in overseas markets by U.S. Embassies and Consulates. Selection as an International Buyer Program partner does not constitute a guarantee by the U.S. Government of the show's success. International Buyer Program partnership status is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

A participation fee of *$8,000* is required for shows of five days or less and having only one International Business Center. For shows more than five days but less than ten days in duration, and/or requiring two International Business Centers, a participation fee of $14,000 is required. For shows ten days or more in duration and/or requiring more than two IBCs, the participation fee will be negotiated, but shall not be less than $19,500. Participation fees are for shows selected and promoted during the period between January 1, 2008 and December 31, 2008. The participation fee is not an application fee.

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) events will not be considered.

General Selection Criteria: The Department will select shows to be International Buyer Program partners that, in the judgment of the Department, best meet the following criteria:

(a) *Intellectual Property Rights Protection:* The trade show organizer cooperates with DOC's Intellectual Property Rights Initiative by including in the terms and conditions of its exhibitor contracts provisions for the protection of intellectual property rights (IPR); has procedures in place at the trade show to address IPR infringement, which, at a minimum, provides information to help U.S. exhibitors procure legal representation during the trade show; and agrees to assist DOC in reaching and educating U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States.

(b) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, *e.g.*, Commercial Service best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides. Export statistics, Country Commercial Guides and more are available at *http://www.export.gov*.

(c) *International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in the Country Commercial Guides (*e.g.* best prospect lists). Previous international attendance at the show may be used as an indicator.

(d) *Scope of Show:* The event must offer a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given priority.

(e) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of U.S. products or products with a high degree of U.S. content will be preferred. In accordance with DOC policy, to have "U.S. content" products and services included in the Export Interest Directory must be either: (i) produced or manufactured in the United States; or, (ii) if produced or manufactured outside of the United States, be marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished product or service being exported. U.S.-sourced inputs that may be considered as contributing to U.S. content, to the extent that they are incorporated into the finished product or service being exported, may include but are not limited to: materials; components; packaging; labor; production equipment and factory overhead; research & development; design; intellectual property; warehousing; distribution; sales; administration & management; advertising; and marketing and promotion.

(f) *Stature of Show:* The trade show must be clearly recognized in the industry it represents as a leading event for the promotion of the products and services of that industry both domestically and internationally. It should serve as a showplace for the latest technology or techniques employed within the sector.

(g) *Exhibitor Interest:* Show Organizers must demonstrate interest on the part of U.S. exhibitors to receive international visitors during the event by providing historical data regarding the number of international attendees and the number of countries represented at prior prensentations of the event. A significant number of the event's U.S. exhibitors should be New-To-Export (NTE) or seeking to expand their distribution into new export markets.

(h) *Overseas Marketing:* There has been a demonstrated effort to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, explaining how efforts should increase individual and group international attendance. (Planned cooperation with Visit USA Committees overseas is desirable. For more information on Visit USA Committees go to *http://www.tia.org/marketing/visit_usa_committees.html.)*

(i) *Logistics:* The site, facilities, transportation services, and availability of accommodations at the site of the exhibition must be capable of accommodating large numbers of attendees whose native language will be other than English.

(j) *Delegation Incentives:* Show Organizers should list or identify a range of incentives to be offered to delegations and/or delegation leaders recruited by Commercial Service overseas posts. Examples of incentives to international visitors and to organized delegations include, but are not limited to: Waived or reduced admission fees; Special events, such as receptions, meetings with association executives, briefings, and site tours; and complimentary accommodations for leaders.

(k) *Cooperation:* Successful applicants must enter into a Memorandum of

Agreement (MOA) that sets forth the specific actions to be performed by the show organizer and the Department of Commerce. The show organizer must be willing to cooperate with the Commercial Service and the International Buyer Program to further the program's goals and adhere to the target dates listed in the MOA and in the event timetables. Past experience of show organizers who have participated in the IBP is taken into account in evaluating the current application to the program.

How to Apply: Interested show organizers [**Note:** should capitalize or not capitalize "show organizer" consistently.] can obtain information and application materials from the point of contact listed under **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. *Applications should be sent via express mail to avoid delays due to the irradiation of regular mail addressed to the DOC Herbert Clark Hoover Building (HCHB) location.*

All applications must be received by 5 p.m. local time on November 6, 2006. For deadline purposes, facsimile or e-mail applications will be accepted; however, paper copies of the signed original applications must be received within five business days after the deadline date. Late applications will not be considered.

Legal Authority: The Commercial Service is authorized to conduct the International Buyer Program under 15 U.S.C. 4724. The Commercial Service has the legal authority to enter into MOAs with show organizers (partners) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. Sections 2455(f) and 2458 (c)). MECEA allows the Commercial Service to accept contributions of funds and services from firms for the purposes of furthering its mission.

Information Collection Requirements: The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0151). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Signed: August 3, 2006.

Todd Thurwachter,

Director, Office of Trade Event Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. E6–14652 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 000724218–6233–10]

Solicitation of Applications for the Native American Business Enterprise Center (NABEC) (formerly Native American Business Development Center (NABDC))

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. Section 1512, the Minority Business Development Agency (MBDA) is soliciting for competitive applications from organizations to operate a Native American Business Enterprise Center (NABEC) (formerly Native American Business Development Center (NABDC)). This is not a grant program to help start a business. Applications submitted must be to operate a Native American Business Enterprise Center (NABEC) and to provide business consultation to eligible clients. Applications that do not meet these requirements will be rejected. The NABEC will provide services in the outlined geographic areas (refer to **SUPPLEMENTARY INFORMATION** section of this Notice).

DATES: The closing date for receipt of applications for the NABEC program is October 18, 2006. Completed applications must be received by MBDA no later than 5 p.m. Eastern Daylight Savings Time at the address below for paper submission or at *http://www.grants.gov/* for electronic submission. The due date and time is the same for electronic submissions as it is for paper submissions. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered. Anticipated time for processing of the NABEC program is approximately ninety days (90) days from the date of publication of this Announcement. MBDA anticipates that awards for the NABEC program will be made with a start date of January 1, 2007.

Pre-Application Conference: A pre-application teleconference will be held for the NABEC program on October 3, 2006, in connection with this solicitation Announcement. The pre-application conference information will be available on MBDA's Portal (MBDA Portal) at *http://www.mbda.gov/*. Interested parties to the pre-application conference must register at MBDA's Portal at least 24 hours in advance of the event.

ADDRESSES:

1 (a) *Paper Submission—If Mailed:* If the application is mailed/shipped overnight by the applicant or its representative, one (1) signed original plus two (2) copies of the application must be submitted. Completed application packages must be mailed to: Office of Business Development—NABEC Program, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. U.S. Department of Commerce delivery policies for Federal Express, UPS, and DHL overnight services require the packages to be sent to the address above.

1 (b) *Paper Submission—If Hand-Delivered:* If the application is hand-delivered by the applicant or his/her representative, one (1) signed original plus two (2) copies of the application must be delivered to: U.S. Department of Commerce, Minority Business Development Agency, Office of Business Development—NABEC Program (extension 1940), HCHB, Room 1874, Entrance #10, 15th Street, NW., Washington, DC (Between Pennsylvania and Constitution Avenues). U.S. Department of Commerce "hand-delivery" policies state that Federal Express, UPS, and DHL overnight services submitted to the address listed above (Entrance #10) cannot be accepted. These policies should be taken into consideration when utilizing their services. MBDA will not accept applications that are submitted by the deadline but rejected due to Departmental hand-delivery policies. The applicant must adhere to these policies in order for his/her application to receive consideration for award.

(2) *Electronic Submission:* Applicants are encouraged to submit their proposal electronically at *http://www.Grants.gov*. Electronic submissions should be made

in accordance with the instructions available at Grants.gov (see *http://www.grants.gov/ForApplicants* for detailed information). MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For further information, please visit MBDA's Minority Business Internet Portal at *http://www.mbda.gov*. Paper applications and Standard Forms may be obtained by contacting the MBDA National Enterprise Center (NEC) for the area where the Applicant is located (See Agency Contacts section) or visiting MBDA's Portal at *http://www.mbda.gov*. Standard Forms 424, 424A, 424B, and SF–LLL can also be obtained at *http://www.whitehouse.gov/omb/grants*, or *http://www.Grants.gov*. Forms CD–511 and CD–346 may be obtained at *www.doc.gov/forms*.

Responsibility for ensuring that applications are complete and received by MBDA on time is the sole responsibility of the Applicant.

Agency Contacts

1. Office of Business Development, 14th and Constitution Avenue, NW., Room 5073, Washington DC 20230. Contact: Efrain Gonzalez, Program Manager at 202–482–1940.

2. San Francisco National Enterprise Center (SFNEC) is located at 221 Main Street, Suite 1280, San Francisco, CA 94105. The designated project for the SFNEC is the North-West NABEC. This region, under the NABEC program covers the states of Wyoming, Montana, Idaho, Utah, Nevada, Oregon, Washington, California and Alaska. Contact: Linda Marmolejo, Regional Director, SFNEC at 415–744–3001.

3. Dallas National Enterprise Center (DNEC) is located at 1100 Commerce Street, Suite 7B–23, Dallas, TX 75242. The designated project for the DNEC is the South-West NABEC. This region, under the NABEC program, covers the states of Louisiana, Arkansas, Oklahoma, Texas, Colorado, New Mexico and Arizona. Contact John Iglehart, Regional Director, Dallas NEC at 214–767–8001.

4. Atlanta National Enterprise Center (ANEC) is located at 401 W. Peachtree Street, NW., Suite 1715, Atlanta, GA 30308–3516. The designated project for the ANEC is the Eastern NABEC. This region, under the NABEC program, covers the states of Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, West Virginia, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine and the District of Columbia. Contact John Iglehart, Acting Regional Director, ANEC at 404–730–3300.

5. Chicago National Enterprise Center (CNEC) is located at 55 E. Monroe Street Suite 1406, Chicago, IL 60603. The designated project for the CNEC is the Mid-West NABEC. This region, under the NABEC program, covers the states of Minnesota, North Dakota, South Dakota, Nebraska, Wisconsin, Kansas, Missouri, Iowa, Illinois, Indiana, Michigan and Ohio. Contact Eric Dobyne, Regional Director, CNEC at 312–353–0182.

SUPPLEMENTARY INFORMATION:

Geographic Service Areas

The NABEC Program will provide services in the following revised geographic areas:

NABEC name	Location of NABEC	Geographic service area
Eastern NABEC	Nashville, TN	States of Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, Tennessee, Kentucky, West Virginia, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine and the District of Columbia.
Mid-West NABEC	Minneapolis, MN	States of Minnesota, North Dakota, South Dakota, Nebraska, Wisconsin, Kansas, Missouri, Iowa, Illinois, Indiana, Michigan and Ohio.
South-West NABEC	Tulsa, OK	States of Louisiana, Arkansas, Oklahoma, Texas, Colorado, New Mexico and Arizona.
North-West NABEC	Billings, MT	States of Wyoming, Montana, Idaho, Utah, Nevada, Oregon, Washington, California and Alaska.

Electronic Access: A link to the full text of the Federal Funding Opportunity (FFO) Announcements for the NABEC Program can be found at *http://www.Grants.gov* or by downloading at *http://www.mbda.gov* or by contacting the appropriate MBDA representative identified above. The FFO contains a full and complete description of the NABEC Program requirements. In order to receive proper consideration, applicants must comply with all information and requirements contained in the FFO. Applicants will be able to access, download and submit electronic grant applications for the NABEC Program in this announcement at Grants.gov. MBDA strongly recommends that applicants not wait until the application deadline date to begin the application process through Grants.gov. The date that applications will be deemed to have been submitted electronically shall be the date and time received at Grants.gov. Applicants should save and print the proof of submission they receive from Grants.gov. Applications received after the closing date and time will not be considered.

Funding Priorities: Preference may be given to applications during the selection process which address the following MBDA funding priorities:

(a) Applicants who submit proposals that include work activities that exceed the minimum work requirements in this Announcement.

(b) Applicants who submit proposals that include performance goals that exceed the minimum performance goal requirements in this Announcement.

(c) Applicants who demonstrate an exceptional ability to identify and work towards the elimination of barriers which limit the access of minority businesses to markets and capital.

(d) Applicants who demonstrate an exceptional ability to identify and work with minority businesses seeking to obtain large-scale contracts and/or insertion into supply chains with institutional customers.

(e) Applicants that utilize fee for service models and those that demonstrate an exceptional ability to charge and collect fees from clients.

(f) Applicants who submit proposals that take a regional approach in providing services to eligible clients.

Funding Availability: The total award period is three years. The Federal funding share in each program year

(2007–2009) (January 1–December 31 respectively) is $1.25 million. MBDA funding availability is subject to Fiscal Year appropriations. MBDA anticipates funding four (4) NABECs from this competitive Announcement.

MBDA requires each award recipient to provide a minimum of ten percent (10%) non-federal cost share. Applicants must submit project plans and budgets for each of the three funding periods. Projects will be funded for no more than one year at a time. Project proposals accepted for funding will not compete for funding in the subsequent second and third budget periods. Second and third year funding will depend upon satisfactory performance, availability of funds to support continuation of the project, and consistency with Department of Commerce and MBDA priorities. Second and third year funding will be granted at the sole discretion of MBDA and the Department of Commerce.

MBDA is soliciting competitive applications from organizations to operate a MBEC in the designated geographic areas. The maximum Federal Funding Amounts for each year are shown below.

All funding periods are subject to the availability of funds to support the continuation of the project, and the Department of Commerce's and MBDA's priorities. Publication of this Notice does not obligate MBDA or the Department to award any specific cooperative agreement or to obligate all or any part of available funds.

Contingent upon the availability of Federal funds, the cost of performance for each of the program funding years is estimated in the chart below. The application must include a minimum cost share of 10% in non-Federal contributions.

Project name	January 1, 2007 through December 31, 2007			January 1, 2008 through December 31, 2008			January 1, 2009 through December 31, 2009		
	Total cost ($)	Federal share ($)	Non-Federal share ($) (10% min.)	Total cost ($)	Federal share ($)	Non-Federal share ($) (10% min.)	Total cost ($)	Federal share ($)	Non-Federal share ($) (10% min.)
Eastern NABEC	347,100	312,500	34,600	347,100	312,500	34,600	347,100	312,500	34,600
Mid-West NABEC	347,100	312,500	34,600	347,100	312,500	34,600	347,100	312,500	34,600
South-West NABEC ...	347,100	312,500	34,600	347,100	312,500	34,600	347,100	312,500	34,600
North-West NABEC	347,100	312,500	34,600	347,100	312,500	34,600	347,100	312,500	34,600

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.801 Native American Business Enterprise Center Program (NABEC) (formerly Native American Business Development Center (NABDC) Program).

Eligibility: For-profit entities (including sole-proprietorships, partnerships, and corporations), and non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate NABECs. Applicants receiving three (3) consecutive funding award cycles (beginning 2007 through 2015) will not be eligible to receive an award in 2016 (and thereafter).

Program Description: In accordance with Executive Order 11625 and 15 U.S.C. Section 1512, the Minority Business Development Agency (MBDA) is soliciting applications from organizations to operate a Native American Business Enterprise Center (NABEC) (formerly Native American Business Development Center).

The NABEC Program requires NABEC staff to provide standardized business assistance services to eligible Native American, tribal entities, Alaska Native Corporations and minority firms with $500,000 or more in annual revenues and/or "rapid growth potential" minority businesses ("Strategic Growth Initiative" or "SGI" firms) directly; to develop and maintain a network of strategic partnerships; to provide collaborative consulting services with other MBDA funded programs and/or strategic partners; to provide strategic business consulting; to work closely with MBDA's Office of Native America Entrepreneurship and Trade; and, to provide referrals for client transactions. These requirements will be used to generate increased results with respect to financing and contracts awarded to minority-owned firms and thus, are a key component of this program.

Eligible clients are SGI minority firms including Native American business enterprises, tribal entities and Alaska Native Corporations capable of generating significant employment and long-term economic growth. However, eligible clients do not have to be tribal members. A significant emphasis for the NABEC Program is to support Native American communities through entrepreneurship.

The NABEC Program shall leverage all available MBDA resources including the (a) Office of Native American Entrepreneurship and Trade, (b) Office of Business Development, and (c) National Enterprise Centers. In addition the NABEC Program shall leverage available telecommunications technology, including the Internet, and a variety of online computer-based resources to increase the level of service that the NABEC can provide to the targeted markets and communities within the defined geographic service area.

The NABEC will place special emphasis on providing access to Federal contracting and procurement opportunities; and, providing collaborative support to the existing network of other MBDA funded projects and/or strategic partners that result in client outcomes.

The NABEC program incorporates an entrepreneurial approach to building market stability and improving the quality of services delivered. This strategy expands the reach of the NABEC by requiring project operators to develop and build upon strategic alliances with public and private sector partners, and MBDA itself, as a means of serving the targeted markets and communities within the Center's defined geographic service area.

MBDA will establish business consulting training programs to support the NABEC client assistance services. These NABEC training programs are designed specifically to foster growth assistance to its clients. The NABEC will also encourage increased collaboration and client/non-client referrals among the MBDA-sponsored networks. This will provide a comprehensive approach to serving the emerging sector of the minority business community.

The NABEC will operate through the use of trained professional business consultants who will assist minority entrepreneurs through direct client engagements. Entrepreneurs eligible for assistance under the NABEC Program

are Native Americans, Native American tribes, Alaska Natives, Alaska Native Corporations, African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian and Pacific Islander Americans, Asian Indians, and Hasidic Jews.

As part of its strategy for continuous improvement, the NABEC shall expand its delivery capacity to all minority firms (as defined above), with greater emphasis on Native American SGI firms. MBDA wants to ensure that NABEC clients are receiving a consistent level of service throughout its funded network. To that end, MBDA will require NABEC consultants to attend training courses designed to achieve standardized services and quality expectations.

Further programmatic information can be found in the FFO.

Match Requirements—Alabama MBEC: Cost sharing of at least 10% is required. Cost sharing is the portion of the project cost not borne by the Federal Government. Applicants must meet this requirement through one or more of the following means or a combination thereof: (1) Client fees (if proposed); (2) cash contributions; (3) non-cash applicant contributions; and/or (4) third party in-kind contributions. Bonus points will be awarded for cost sharing exceeding 10 percent that is applied on the following scale: more than 10%–less than 15%—1 point; 15% or more–less than 20%—2 points; 20% or more–less than 25%—3 points; 25% or more–less than 30%—4 points; and, 30% or more—5 points. Applicants must provide a detailed explanation of how the cost-sharing requirement will be met. The NABEC may charge client fees for services rendered. Client fees, if charged, shall be used towards meeting cost share requirements. Client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives.

Evaluation Criteria: Proposals will be evaluated and applicants will be selected based on the following criteria. An application must receive at least 70% of the total points available for each evaluation criterion, in order for the application to be considered for funding. The maximum total of points that can be earned is 105 including bonus points for related non-federal cost sharing, except when oral presentations are made by applicants. If oral presentations are made (see paragraph 5 below), the maximum total of points that can be earned is 115.

1. *Applicant Capability (40 points).* The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- *Community*—experience in and knowledge of the Native American community, Native American tribal entities and minority business sector and strategies for enhancing its growth and expansion; particular emphasis shall be on expanding SGI firms and tribal entities. This factor will be evaluated on whether or not the applicant has a physical presence (2 years minimum) in the geographic service area at the time of application (4 points);
- *Business Consulting*—experience in and knowledge of business consulting of SGI firms and tribal entities (5 points);
- *Financing*—experience in and knowledge of the preparation and formulation of successful financial transactions (5 points);
- *Procurements and Contracting*—experience in and knowledge of the public and private sector contracting opportunities for Native American entities and minority businesses, as well as demonstrated expertise in assisting clients into supply chains (5 points);
- *Financing Networks*—resources and professional relationships within the corporate, banking and investment community that may be beneficial to Native American entities and minority-owned firms (5 points);
- *Establishment of a Self-Sustainable Service Model*—summary plan to establish a self-sustainable model for continued services to the Native American and MBE communities beyond the MBDA funding cycle (3 points);
- *MBE Advocacy*—experience and expertise in advocating on behalf of Native American community, Native American tribal entities and minority businesses, both as to specific transactions in which a minority business seeks to engage, and as to broad market advocacy for the benefit of the minority community at large (3 points); and,
- *Key Staff*—assessment of the qualifications, experience and proposed role of staff who will operate the NABEC. In particular, an assessment will be made to determine whether proposed key staff possesses the expertise in utilizing information systems and the ability to successfully deliver services (10 points).

2. *Resources (20 points).* The applicant's proposal will be evaluated according to the following criteria:

- *Resources*—discuss those resources (not included as part of the cost-sharing arrangement) that will be used, including (but not limited to) existing prior and/or current data lists that will serve in fostering immediate success for the NABEC (8 points);
- *Location*—Applicant must indicate if it shall establish a location for the Center that is separate and apart from any existing offices in the geographic service area (2 points);
- *Partners*—discuss how you plan to establish and maintain the network of five (5) External Strategic Partners and a minimum of four (4) Internal Strategic Partners. The applicant should also describe how these partners will support the NABEC to meet its performance objectives (5 points); and,
- *Equipment*—discuss how you plan to accomplish the computer hardware and software requirements (5 points).

3. *Techniques and Methodologies (20 points).* The applicant's proposal will be evaluated as follows:

- *Performance Measures*—relate each performance measure to the financial, information and market resources available in the geographic service area to the applicant (including existing client list) and how the goals will be met (marketing plan). Specific attention should be placed on matching performance outcomes (as described under "Geographic Service Areas and Performance Goals" of the FFO) with client service hours. The applicant should consider existing market conditions and its strategy to achieve the goal (10 points);
- *Plan of Action*—provide specific detail on how the applicant will start operations. The NABEC shall have thirty (30) days to become fully operational after an award is made. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment are in place and operational, all necessary forms are developed (*e.g.*, client engagement letters, other standard correspondence, etc.), and the Center is ready to open its doors to the public (5 points); and,
- *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently all staff time will be used to achieve the work requirements (5 points).

4. *Proposed Budget and Supporting Budget Narrative (20 points).* The applicant's proposal will be evaluated on the following sub-criteria:

- Reasonableness, allowability and allocability of costs. All of the proposed expenditures must be discussed and the budget line item narrative must match the proposed budget. Fringe benefits and other percentage item calculations must match the proposed line item on the budget. (5 points);
- Proposed cost sharing of 10% is required. The non-federal share must be

adequately documented, including, how client fees (if charged) will be used to meet the cost-share (5 points); and,

Performance Based Budget. Discuss how the budget is related to the accomplishment of the work requirements and the performance measures. Provide a budget narrative that clearly shows the connections (10 points).

Proposals with cost sharing which exceeds 10% will be awarded bonus points on the following scale: More than 10%-less than 15%—1 point; 15% or more-less than 20%—2 points; 20% or more-less than 25%—3 points; 25% or more-less than 30%—4 points; and 30% or more—5 points.

5. *Oral Presentation—Optional (10 points).* Oral presentations are held only when determined by MBDA. When the merit review by the panel results in applications scoring 70% or more of the available points for each criterion, MBDA may request all those applicants to develop and provide an oral presentation. This presentation will be used to establish a final evaluation and rating.

The applicant's presentation will be evaluated on the following sub-criteria:

(a) The extent to which the presentation demonstrates how the applicant will effectively and efficiently assist MBDA in the accomplishment of its mission (2 points);

(b) The extent to which the presentation demonstrates business operating priorities designed to manage a successful NABEC (2 points);

(c) The extent to which the presentation demonstrates a management philosophy that achieves an effective balance between micromanagement and complete autonomy for its Project Director (2 points);

(d) The extent to which the presentation demonstrates robust search criteria for the identification of a Project Director (1 point);

(e) The extent to which the presentation demonstrates effective employee recruitment and retention policies and procedures (1 point); and,

(f) The extent to which the presentation demonstrates a competitive and innovative approach to exceeding performance requirements (2 points).

Review and Selection Process—Alabama MBEC

1. *Initial Screening.* Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present.

2. *Panel Review.* Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. MBDA anticipates that the review panel will be made up of at least three independent reviewers (all Federal employees) who will review all applications based on the above evaluation criteria. Each reviewer will evaluate and provide a score for each proposal. In order for an application to be considered for funding, it shall need to achieve 70% of the available points for each criterion. Failure to achieve these results will automatically deem the application as unsuccessful.

3. *Oral Presentation—Optional.* When the merit review by the panel results in applications scoring 70% or more of the available points for each criterion, MBDA may request all those applicants to develop and provide an oral presentation. The applicants may receive up to 10 additional points based on the presentation and content presented. If a formal presentation is requested, the applicants will receive a formal communication (via standard mail, e-mail or fax) from MBDA indicating the time and date for the presentation. In person presentations are not mandatory but are encouraged; telephonic presentations are acceptable. Applicants will be asked to submit a power point presentation (or equivalent) to MBDA that addresses the oral presentation criteria (see above, Evaluation Criteria, item 5. Oral Presentation—Optional). This presentation must be submitted at least 24 hours before the scheduled date and time of the presentation. The presentation will be made to the National Director (or his/her designee) and/or up to three senior MBDA staff who did not serve on the merit evaluation panel. The oral panel members may ask follow-up questions after the presentation. MBDA will provide the teleconference dial-in number and pass code. Each finalist will present to MBDA staff only; other applicants are not permitted to listen (and/or watch).

All costs pertaining to this presentation shall be borne by the applicant. NABEC award funds may not be used as a reimbursement for this presentation. MBDA will not accept any requests or petitions for reimbursement. The oral panel members shall score each presentation in accordance with the oral presentation criteria. An average score shall be compiled and added to the original score of the panel review.

4. *Final Recommendation.* The National Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the selection criteria as outlined in this Announcement and the following:

(a) The evaluations and rankings of the independent review panel and the evaluation(s) of the oral presentations, if applicable;

(b) Funding priorities. The National Director (or his/her designee) reserves the right to conduct a site visit (subject to the availability of funding) to applicant organizations receiving at least 70% of the total points available for each evaluation criterion, in order to make a better assessment of the organization's capability to achieve the funding priorities; and,

(c) The availability of funding.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Limitation of Liability: Applicants are hereby given notice that funds have yet to be appropriated for this program. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other Agency priorities. Publication of this announcement does not oblige MBDA or the Department of Commerce to award any specific project or to obligate any available funds.

Universal Identifier: Applicants should be aware that they will be required to provide a Dun and Bradstreet Data Universal Numbering system (DUNS) number during the application process. *See* the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or by accessing the Grants.gov Web site at *http://www.Grants.gov.*

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389) are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by Office of Management and Budget (OMB) under the respective

control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provisions of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Executive Order 12866: This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice for an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grant, benefits and contracts (5 U.S.C. 533(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 533 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: August 31, 2006.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. E6–14758 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083006A]

Endangered Species; File No. 1580

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Dynergy Northeast Generation, Inc. (Dynergy), 992–994 River Road, Newburgh, NY 12550, has applied in due form for a permit to take shortnose sturgeon (Acipenser brevirostrum) for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 6, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978) 281–9300; fax (978) 281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1580.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Shane Guan. (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Dynergy seeks a two (2) year scientific research permit on shortnose sturgeon in its efforts to study the abundance of all of sampled species in the Hudson River estuary from Battery Park (Manhattan) to River Mile 152. Based on previous permitted sampling efforts, Dynergy requests to lethally take up to 40 shortnose sturgeon larvae and to capture, handle, collect, measure, externally tag and release up to 82 juvenile and adult sturgeon obtained by various sampling methods. Dynergy sampling programs will include a Longitudinal River Ichthyoplankton Survey, a Beach Seine Survey, a Fall Juvenile Survey and an Adult Striped Bass Mark/Recapture Survey. Gear associated with the plankton survey are a 1.0–m^2 epibenthic sled, and a 1.0–m^2 Tucker Trawl to be towed by boat against the prevailing current for 5 minutes intervals on a weekly or bi-weekly basis (depending on the season) beginning March 6 and ending on December 1 of each year of the permit. An average of 133 sample trawls will be done per week. The Beach Seine Survey will utilize a 30.5–m total length beach seine with bag deployed by boat in 450 m^2 semi-circular sweeps to collect YOY fish in the shore zone. The sampling period is bi-weekly from June 12 to October 16 each year of the permit with an average of 100 samples per week. Gear associated with the Fall Juvenile Survey is a 3–m Beam Trawl and Tucker Trawl to be towed by boat on alternating weeks in three separate sampling periods from July 1 to December 1 in each year of the permit with an average of 180 trawls per week. The Adult Striped Bass Mark/Recapture Survey will utilize a 9–m otter trawl with tow duration of typically 10 minutes and with approximately 500 trawls occurring between January and April and then between October and December.

Dated: August 30, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–14713 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083006E]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a meeting of the Hawaii members of the Council's Bottomfish Plan Team (BPT).

DATES: The meeting of the BPT will be held on September 27, 2006, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting of the Hawaii BPT will be held at the Western Pacific Fishery Management Council conference room, 1164 Bishop Street, Suite 1400, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The BPT will meet on September 27, 2006, to discuss the following agenda items:

1. Introductions, approval of draft agenda and assignment of rapporteurs
2. Report on Fishery Independent Research Workshop

3. Report on Bottomfish Stock Assessment
4. Status of the Stock Report
5. Separation of Guam Bottomfish Management Unit Species (BMUS) catch per unit effort (CPUE) data into deep, shallow and combined
6. Plan Team Recommendations
7. Other Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: August 31, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–14679 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082206A]

Endangered Species; File No. 1563

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that North Carolina Division of Marine Fisheries (NCDMF; Mr. Blake Price, Principal Investigator), P.O. Box 769, Morehead City, North Carolina 28557, has been issued a permit to take threatened and endangered sea turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 17, 2006, notice was published in the **Federal Register** (71 FR 13816) that a request for a scientific research permit to take loggerhead (*Caretta caretta*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), and leatherback (*Dermochelys coriacea*) sea turtles had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The NCDMF will be testing two types of large mesh gillnets to ascertain which type of net will reduce sea turtle interactions while maintaining targeted catch rates for southern flounder (*Paralichthys lethostigma*). Both nets will be constructed of 0.52 mm diameter monofilament with 6–inch (15.2 cm) mesh webbing, but the control net is 25 meshes deep while the low profile net is twelve meshes deep. Control nets have additional floatation every six feet (1.8 m) and tie downs every 30 feet (9.1 m); experimental nets have neither. NCDMF plans to conduct 150 paired net deployments (one of each type of net). To follow fishing protocols, nets will be set at dusk and retrieved in the early morning. Captured sea turtles will be examined for any possible injuries and held for approximately two hours to ensure they are healthy before being transported away from the fishing area and released. Turtles will be identified to species, measured, photographed, and flipper and PIT tagged. Any comatose or debilitated turtles will be transported to a rehabilitation center. During the life of the permit, the applicant is authorized to capture 23 Kemp's ridley, 23 loggerhead, 22 green, 2 hawksbill, and 2 leatherback sea turtles. Of the captured turtles, 11 Kemp's, 11 loggerhead, 11 green, 1 hawksbill, and 1 leatherback may be mortalities. Research will be conducted in Pamlico Sound, North Carolina and the permit expires in December 2007.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 29, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–14661 Filed 9–5–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense, DoD.

ACTION: Notice of closed advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on VTOL/STOL will meet in closed session on September 12–13, 2006; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This meeting is a classified executive session to begin the review of gathered data and to begin formulating the report's contents.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meeting, the Defense Science Board Task Force will: Assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part

102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: August 30, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7444 Filed 9–5–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Advisory Committee

AGENCY: Department of Defense, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, this notice announces the annual meeting of the Department of Defense Historical Advisory Committee. The committee will conduct reports from Army and Navy Historical Advisory Committees for future submission to higher authority. The meeting will be open to the public.

DATES: Wednesday, September 27th at 10 a.m.

ADDRESSES: The meeting will be held on the 12th Floor, Conference Room #4, 1777 North Kent Street, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Mrs. Pamela Bennett at 703–588–7889 for information, and Ms. Carolyn Thorne at 703–588–7890 or Dr. Diane Putney at 703–588–7875 upon arrival at the building in order to be admitted.

Dated: August 29, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7445 Filed 9–5–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Thursday, November 2, 2006, at the Defense Threat Reduction Agency (DTRA), and on Friday, November 3, 2006 in the Pentagon, Washington, DC.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology and Logistics) on technology security, combating Weapons of mass destruction, chemical and biological defense, transformation of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

DATES: Thursday, November 2, 2006, (8 a.m. to 4 p.m.) and Friday, November 3, 2006, (8 a.m. to 9:20 a.m.).

ADDRESSES: Defense Threat Reduction Agency, Defense Threat Reduction Center Building, Conference Room G, Room 1252, 8725 John J. Kingman Road, Fort Belvoir, Virginia and the USD (AT&L) conference Room (3D1019), the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Phone: (703) 767–5717.

Dated: August 30, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7443 Filed 9–5–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Meeting

AGENCY: National Board for Education Sciences; ED.

ACTION: Notice of open meeting and partially closed session.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Board for Education Sciences. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portion of the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Sonia Chessen at (202) 219–2195 by September 8. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: September 20 and 21, 2006.

Time: September 20, 2 p.m. to 5 p.m.; September 21, 9 a.m. to 2 p.m., September 21, 9 a.m. to 10:30 a.m. Closed Session.

Location: Washington Court Hotel, 525 New Jersey Ave., NW., Washington, DC 20001, (room to be announced).

FOR FURTHER INFORMATION CONTACT: Sonia Chessen, Executive Director, National Board for Education Sciences, Washington, DC 20208. Tel: (202) 219–2195; fax: (202) 219–1466; e-mail: *Sonia Chessen@ed.gov*.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding of applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute. On September 21, the Board will review the day's agenda and hear from the Director an update on the work of the Institute of Education Sciences (IES) as well as a plan to implement the IES research priorities. At 4 p.m. there will be a presentation, "Research Evidence Needed by Education Policy Makers," by Kati Haycock, Director of the Education Trust.

On September 21, after a review of the prior day's activities, there will be a closed session from 9 a.m. to 10:30 a.m. to review a statement of work for a Congressionally mandated final report evaluating the effectiveness of IES in meeting its goals and objectives. Because public discussion of this action would jeopardize a fair and open competition and potentially frustrate the implementation of a proposed agency activity, this portion of the meeting will be closed to the public under exemption 9 B of section 552b(c) of Title 5 U.S.C.

The meeting will reopen at 10:45 a.m. for a discussion of policy proposals presented by the Board's Subcommittee on the National Center for Education Evaluation and a report from the Center Director. Reports from the Centers on Educational Research and Special Education Research will follow. The meeting will adjourn at 2 p.m.

A final agenda will be available from Sonia Chessen on September 8, 2006.

A summary of the activities at the closed session and related matters

which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public. Records will be kept of all Board proceedings and will be available for public inspection at the office of the National Board for Education Sciences, Room 627H, 555 New Jersey Ave. NW., Washington, DC 20208 from 9 a.m. to 5 p.m. EST.

Dated: August 31, 2006.

Sue Betka,

Deputy Director for Administration and Policy, Institute of Education Sciences.

[FR Doc. 06–7449 Filed 9–5–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Office of Civilian and Radioactive Waste's Form RW–859 "Nuclear Fuel Data Survey," to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to the OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712, FAX at (202) 287–1705, or e-mail at *Grace.Sutherland@eia.doe.gov*.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e, new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form RW–859, "Nuclear Fuel Data Form."
2. Office of Civilian Radioactive Waste.
3. OMB Number 1901–0287.
4. Reinstatement for a three-year approval.
5. Mandatory.
6. Form RW–859 collects data to be used by the Office of Civilian Radioactive Waste to define, develop, and operate its storage that requires information on spent nuclear fuel inventories, generation rates, and storage capacities. Respondents are all owners of nuclear power plants and owners of spent nuclear fuel.
7. Business or other for-profit.
8. 5,074 hours.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

Issued in Washington, DC, August 30, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–14701 Filed 9–5–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0237 FRL–8090–4]

Cadmus Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Cadmus Group, Inc., in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Cadmus Group, Inc., has been awarded multiple contracts to perform work for OPP, and access to this information will enable Cadmus Group, Inc., to fulfill the obligations of the contract.

DATES: Cadmus Group, Inc., will be given access to this information on or before September 11, 2006.

FOR FURTHER INFORMATION CONTACT: Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0786; e-mail address: *felicia croom@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–0237 Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. Contractor Requirements

Under these contract numbers, the contractor will perform the following:

Under contract no. 68-C-02-026, the contract will require the contractor to have access to CBI data to review and evaluate the most recent information on the toxicity, occurrence and exposure to atrazine and triazines in water. In addition, it is anticipated that their need to have CBI clearance will be necessary to access the best available, peer reviewed science to support decisions and develop analyses for the Six-Year Review of National Primary Drinking Water Regulations and the contaminant candidate list processes which consider the occurrence and health effects of pesticides.

These contracts involve no subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, and that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Cadmus Group, Inc., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Cadmus Group, Inc., is required to submit for EPA approval, a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Cadmus Group, Inc., until the requirements in this document have been fully satisfied. Records of information provided to Cadmus Group, Inc., will be maintained by EPA Project Officers for these contracts. All information supplied to Cadmus Group, Inc., by EPA for use in connection with these contracts will be returned to EPA when Cadmus Group, Inc., has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: August 29, 2006.

Robert Forrest,

Acting Director, Office of Pesticide Programs.

[FR Doc. E6–14717 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8217–3]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92–463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice to the EPA Administrator on a broad range of environmental policy, technology, and management issues. The Council is a panel of individuals who represent diverse interests from academia, industry, non-governmental organizations, and local, state, and Tribal governments. The Administrator asked NACEPT to address sustainable water infrastructure, environmental stewardship/cooperative conservation, and energy and the environment. The purpose of this meeting is to learn more about these topics from a regional perspective. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacept/calnacept.htm*.

DATES: NACEPT will hold a two day open meeting on Thursday, September 28, 2006, from 8:30 a.m. to 1:45 p.m. and Friday, September 29, 2006, from 8 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton Denver Cherry Creek Hotel, 600 South Colorado Boulevard, Denver, Colorado 80246. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, (202) 233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania, Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or to provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer, at the contact information above. The public is welcome to attend all portions of the meeting.

Meeting Access: For information on access or services for individuals with disabilities, please contact Sonia Altieri at 202–233–0061 or *altieri.sonia@epa.gov*. To request accommodation of a disability, please contact Sonia Altieri, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 29, 2006.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. E6–14709 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0662; FRL–8087–9]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before October 6, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0662, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0662. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT : Todd Peterson, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-7224; e-mail address: *peterson.todd@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *File Symbol:* 52911-RO. *Applicant*: Bedoukian Research, Inc., 21 Finance Drive, Danbury, CT, 06810. *Product name*: Roctenol. Insect attractant. *Active ingredient*: R-(-)-1-Octen-3-ol at 98.0%. *Proposal classification/Use*: Attractant. T. Peterson.

2. *File Symbol:* 69295-E. *Applicant:* Milwaukee Metropolitan Sewerage District, 260 West Seeboth Street, Milwaukee, WI 53204. *Product name*: Milorganite ® 6-2-0 Deer Repellent. Animal repellent *Active ingredient*: Activated sewage sludge at 87.57%. *Proposal classification/Use*: Animal repellent. T. Peterson.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 23, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–14640 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0389; FRL–8078–5]

Pesticide Product Registration Approval; Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces and requests comments on an application to register the pesticide product ShakeAway Deer Repellent Granules containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before October 6, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0389, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2004–0389. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

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In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Ph.D., Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-7224; e-mail address: *peterson.todd@epa.gov*.

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vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of coyote urine, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of coyote urine when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

The company submitted an application to EPA to register the pesticide product ShakeAway Deer Repellent Granules (EPA File Symbol 80917-1) containing the same chemical at 5 percent. However, since the notice of receipt of the application to register the product as required by section 3(c)(4) of FIFRA, as amended, did not publish in the **Federal Register**, interested parties may submit comments on or before October 6, 2006 for this product only.

Listed below is the application approved on March 28, 2006 for ShakeAway Deer Repellent Granules.

EPA issued a notice, published in the **Federal Register** of December 15, 2004 (69 FR 75063) (FRL–7687–7), which announced that Shake-Away, 2330 Whitney Avenue, Hamden, CT, 06518, had submitted an application to register the pesticide product, Deer Repellent Granules, an animal repellent (File Symbol 80917-R), containing 5% coyote urine. This product was not previously registered.

The application was approved on March 28, 2006, as Shake-Away Deer Repellent Granules (EPA Registration Number 80917-1) as an animal repellent.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 23, 2006.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E6–14718 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8217–2]

Sole Source Aquifer Designation of the Troutdale Aquifer System; Clark County, WA

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination.

SUMMARY: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e), Pub. L. 93–523), and in response to a petition from a group of Clark County residents (two private groups and 8 individuals), the U.S. Environmental Protection Agency (EPA) Region 10 Administrator has determined that the Troutdale aquifer system, in Clark County, Washington, is a sole or principal source of drinking water, and that if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially-assisted projects proposed over the designated aquifer system will be subject to EPA review to ensure that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1 p.m. eastern time on September 20, 2006.

ADDRESSES: The information upon which this determination is based is available to the public and may be inspected during normal business hours at the EPA Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101, or on the EPA Web site at: *http://yosemite.epa.gov/r10/water.nsf/Sole+Source+Aquifers/Program.*

FOR FURTHER INFORMATION CONTACT: Martha Lentz, Hydrogeologist, Office of Environmental Assessment, OEA–095, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, 206–553–1593.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

The EPA Region 10 Drinking Water Section received a draft sole source aquifer (SSA) petition in early November 2005 from a group of Clark County residents, who represent both individuals and private public interest groups. The petitioners were:

The Columbia Riverkeeper,
The Rosemere Neighborhood Association,
Dvija Michael Bertish,
Dennis Dykes,
Thom McConathy,
Nathan Reynolds,
Karen Kingston,
Coleen Broad,
Richard Dyrland,
Dean Swanson.

A final petition was presented to EPA on November 29, 2005. On December 28, 2005, EPA sent a letter to the petitioners acknowledging that the agency considered the petition complete, and that the technical review process would begin.

In January 2006 EPA met with the petitioners to discuss expanding the aquifer system boundary to include more of the geologic formations. There was agreement to extend the boundary, and the petitioners agreed to provide updated values for population and drinking water use data. On January 17, 2006 the petitioners provided the adjusted water use and population data to EPA.

In February of 2006, the Troutdale aquifer system review was completed and the area appeared to meet all criteria for SSA designation. The legal and technical basis for the proposal was outlined in an EPA publication titled: "Draft Support Document for the Sole Source Aquifer Designation of the Troutdale Aquifer System". After a technical peer review and public

comment period, a final publication was compiled titled: "Final Support Document for the Sole Source Aquifer Designation of the Troutdale Aquifer System".

II. Basis for Determination

Among the factors to be considered by EPA in connection with the designation of an area under Section 1424(e) are: (1) Whether the aquifer is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health.

EPA Region 10 follows EPA guidance which interprets the statutory language of "sole or principal" as meaning that the aquifer must supply at least 50 percent of the drinking water for the area. Furthermore, there should be no alternate drinking water source(s) which can physically, legally, and economically supply all those who depend upon the aquifer for drinking water, should it become contaminated. In addition, aquifer boundaries should be delineated based on sound hydrogeologic principles and the best available scientific information.

Although designation determinations are largely based on science-based criteria, the Regional Administrator may also consider the overall public interest and net environmental and public health benefits in making a sole source aquifer determination.

On the basis of information available to this Agency, the Region 10 Administrator has made the following findings:

(1) The aquifer system is the principal source of drinking water (approximately 99.4%) for the people in the Troutdale aquifer system area and there are no alternate sources which can physically, legally, and economically supply all those who depend upon the aquifer for drinking water, should it become contaminated. Potential alternate sources considered include surface water, alternative aquifers, and an intertie with the Portland Water Bureau. None of these drinking water sources are considered by EPA to be feasible replacements for the entire aquifer system due to economic barriers or because these sources are not consumed or utilized for domestic purposes in significant quantities.

(2) Contamination of the aquifer system would create a significant hazard to public health. The aquifer system is vulnerable to contamination because recharge occurs essentially over the entire area, the aquifer is highly permeable, and there are many human activities that have released, or have the potential to release, contaminants to the aquifers. The Washington Department of Ecology (WDOE) currently lists 204 active cleanup and 12 Federal Superfund sites in the proposed aquifer service area. These sites are known to have been contaminated and are undergoing cleanup. Many of these sites include plumes of groundwater contamination. WDOE also lists 625 hazardous waste generators, and 609 underground storage tanks in this area.

- Superfund sites—12
- Active state cleanup sites—90
- Active voluntary and independent cleanup sites—114
- LUST sites—185
- Hazardous waste sites—625
- UST sites—609

Other sources of contamination include untreated or poorly treated storm water and septic systems. There are about 7,000 septic systems within the City of Vancouver's sewer service area. There are tens of thousands of additional septic systems outside the city discharging to the aquifer. The county is experiencing rapid growth which increases the threat to the quality of the aquifer as well as increases the demand for potable water.

Because the aquifer system is vulnerable to contamination and restoring groundwater quality can be difficult or even impossible; and because the aquifer system is the principal source of drinking water for the area and there are no other sources which can economically supply all those who depend upon it for drinking water; EPA believes that contamination of the aquifer system would pose a significant hazard to public health.

These findings are based on information from various sources including the petition, EPA guidance, U.S. Geological Survey reports, and public comments.

III. Description of the Troutdale Aquifer System

The following is a summary of information from the Support Document available upon request from EPA Region 10, or from the EPA Web site. Much of the hydrogeological information in the Support Document is taken from the petition and from "Description of the Groundwater Flow System in the Portland Basin, Oregon and Washington", U.S. Geological Survey (USGS) Water Supply Paper 2470–A, by McFarland, William D. and David S. Morgan, 1996A.

The petitioned area is within Clark County, Washington, which is a part of the southernmost boundary of the state, along the Columbia River. The geography is characterized by flat-lying alluvial lands along the Columbia River and its tributaries. These alluvial lands are interrupted by low, rolling hills and/or buttes with benches and hilly areas that rise to meet the foothills of the Cascade Range to the east and the northeast. The altitude of the land surface ranges from approximately 10 feet along the Columbia River to about 3,000 feet in the foothill of the Cascade Range. The Columbia River flows westward out of the Columbia River Gorge, past the City of Vancouver, Washington, where it flows northward. The tributaries to the Columbia River that drain Clark County include the North and East Forks of the Lewis, Little Washougal, Washougal, and Lake Rivers. Major creeks are Cedar, Salmon, Burnt Bridge, and Lacamas Creeks.

The geologic units of the Troutdale aquifer system are all lacustrine and fluvial sediments of the upper and lower members of the Troutdale Formation, other consolidated sand and gravel aquifer units, and overlying unconsolidated alluvium and flood deposits. These aquifer system units overlie volcanic and marine sedimentary rocks that are commonly known as the "older rocks" unit. The older rocks unit is minimally productive as an aquifer and is therefore not included in the aquifer system being considered for sole source designation.

Sedimentary units of the aquifer system include eight hydrogeologic units comprising the Portland Basin aquifer system. From youngest to oldest, these hydrogeologic units are (1) The unconsolidated sedimentary aquifer, (2) the Troutdale gravel aquifer in the Troutdale Formation, (3) confining unit 1, (4) the Troutdale sandstone aquifer in the Troutdale Formation, (5) confining unit 2, (6) the sand and gravel aquifer, and (7) older rocks. The eighth unit is an undifferentiated fine-grained sediment deposit that occurs in the basin where the Troutdale sandstone and the sand and gravel aquifer are absent or where there is insufficient information to characterize the aquifer units within the lower Troutdale member.

The quality of groundwater in the proposed aquifer service area is generally good with some exceptions. Dissolved-solids concentrations ranged from 12 to 245 milligrams per liter, with a median concentration of 132 milligrams per liter. Most waters can be characterized as soft to moderately hard. Concentrations of nitrate as nitrogen exceeded 1.0 milligram per liter throughout the Vancouver urban area, and were as large as 6.7 milligrams per liter (Maximum Contaminant Level (MCL) is 10 milligrams per liter). Potential nitrate sources are septic

systems and fertilizers. According to the 1990 Census, there are more than 31,000 septic systems in Clark County. An analysis of limited historical data indicates that nitrate concentrations may be decreasing in the southwestern part of the county around the Vancouver urban area. A slight increase in nitrate concentrations was noted in rural areas. Nitrate concentrations correlated with sulfate concentrations (r = 0.61), indicating similar sources for the two. Volatile organic compounds have been detected in wells in the Vancouver urban area. Compounds identified included tetrachloroethene, 1,1,1-trichloroethane, and other solvents. Atrazine and 2,4-D have also been detected in well water. Trace elements and radiochemical constituents were present only at small levels, indicating natural sources for these constituents.

The Troutdale aquifer system boundaries are represented by rivers and the geologic boundary between the aquifer system units and the older rocks unit. The Columbia River forms the southern and western boundaries of the proposed Troutdale aquifer system. The northern boundary follows the North Fork of the Lewis River from its confluence with the Columbia River, east to the confluence of Cedar Creek. Cedar Creek is used as the northeast boundary because its location is the closest geographic representation of the geologic boundary between the Troutdale unit and the older rocks unit, and the creek also most likely acts as a local ground water divide for the upper parts of the aquifer system. The aquifer boundary follows Cedar Creek east where the boundary turns southeast and follows the mapped geologic contact between the Troutdale Formation and the older rocks unit. The eastern boundary follows the geologic contact south to the Little Washougal River, and then follows the Little Washougal River to its confluence with the Washougal River. The boundary then follows the Washougal River south to Woodburn Hill, where it turns northwest and follows the geologic contact along a small outcrop of the older rocks unit. The boundary follows the geologic contact through the City of Camas, and meets the Columbia River. In the northern part of the area, the aquifer system boundary is drawn around Bald Mountain, which is excluded from the aquifer system because it is composed of the older rocks unit. Please see the Support Document for a more detailed hydrogeologic description.

IV. Project Reviews

The Safe Drinking Water Act authorizes EPA to review proposed Federal financially-assisted projects which have the potential to contaminate a designated SSA. Federal assistance may be denied if EPA determines that a project may contaminate the SSA through its recharge zone so as to create a significant hazard to public health. Outright denial of Federal funding is rare as most projects pose limited risk to ground water quality or can be feasibly modified to prevent ground water contamination. Proposed projects that are funded entirely by state, local, or private concerns are not subject to SSA review by EPA.

EPA does not review all possible Federal financially-assisted projects, but tries to focus on those projects which pose the greatest risk to public health. Memorandums of Understanding have been developed between EPA and various Federal funding agencies to help identify, coordinate, and evaluate projects. EPA relies to the maximum extent possible on existing local and state mechanisms to protect SSAs from contamination. Whenever feasible, EPA coordinates project reviews with local and state agencies that have a responsibility for ground water protection. Their comments are given full consideration in the Federal review process.

V. Public Participation and Response to Comments

The following is a summary of the information from the "EPA Response to Public Comments Submitted on the Draft Support Document for the Sole Source Aquifer Designation of the Troutdale Aquifer System", which is available on the EPA Region 10 Sole Source Aquifer Web site.

EPA used various methods to notify and involve the public and others in the Troutdale Aquifer System SSA designation process. The outreach effort included briefings to local and State government, distribution of EPA facts sheets, placing information in local libraries, a public advertisement in the local newspaper, and posting all designation information on the EPA Region 10 Sole Source Aquifer Web site.

A public comment period was in effect from March 1, 2006 to May 1, 2006. EPA received 26 letters of support for the designation from a combination of individuals, public interest groups, Indian tribes, and public utilities. A letter from the City of Portland Bureau of Water Works suggested corrections to the Support Document regarding accurate wording of information about the Bureau of Water Works. A letter from the Board of Clark County Commissioners listed 7 questions for EPA to answer. In a follow-up letter, the Board questions the need for the designation and requests a written guarantee that EPA will only address technical aspects of federally-funded projects in the area, and not involve itself in local land use issues. A letter from the City of Vancouver questioned the need for the designation, and questioned the validity of the alternative source evaluation. There were no letters expressing strong opposition to the designation.

The primary reason given for supporting the proposed action was a belief that designation would increase protection of the area's ground water. Many people cited concerns regarding historical and current ground water contamination of the aquifer system, indicating the high degree of aquifer vulnerability. Many cited the educational benefit that SSA status would have on the area's residents and on Clark County government on the source of the area's drinking water, and its value and the need for protection and conservation. Some people commented that protection of the area's ground water was important because there are no feasible alternate sources of drinking water.

Two local governmental agencies questioned the need for the sole source, citing other ground water protection laws that are currently in effect. In response, there is no program in the State of Washington that designates an entire aquifer boundary for protection efforts. EPA has authority to review, and recommend mitigating measures to any federally-financially assisted project that is determined to be a risk to the ground water. No such review exists through any other program.

One governmental agency expressed concern that special interests would exploit the designation which would lead to unnecessary project delays and the advancement of other agendas. In response, EPA's role, after designation, is to review federally-financially assisted projects proposed in the area, to make sure that they will not contaminate the aquifer. Project delays would only occur if it became necessary to incorporate mitigating measures to assure that the public's drinking water would be protected.

One government agency believes that there are feasible alternative sources of drinking water for the area. In response, EPA considered and evaluated the potential costs of supplying the aquifer population with water from various rivers, Lake Vancouver, *etc.* * * * individually. We did not consider them collectively because if they were not feasible individually, then they would certainly not be economically feasible

collectively. It would cost considerably more to hook up everyone to not only a river source, but also to a lake source. When evaluating economic feasibility, the costs of supply lines running to every single household in the area must be included * * * this includes every household up in the foothills, out in the middle of the woods, and not just in the metropolitan areas. Although there may be a collection of alternative water supplies that could serve the City of Vancouver, this still does not meet the EPA guidance criteria for alternative sources, which states that it has to be shown that the alternative source could supply the entire population that lives over the aquifer. We requested information from the public that would show us if any such alternatives exist, but none were supplied to us.

One government agency requested the EPA provide the technical basis for listing Salmon Creek and Lacamas Creek as losing stream reaches. In response, both creeks were measured as losing reaches by the U.S. Geological Survey in stream measurements made in 1996.

One government agency expressed concern that EPA is unwilling to guarantee in writing that Federal agency Memorandums of Understanding (MOU's) will only address technical project elements and not diverge into non-technical issues such as land use or other local jurisdiction decisional concerns. In response, EPA creates MOU's with other Federal agencies to ensure that that EPA receives project information on all federally-financially assisted projects that are located in a Sole Source Aquifer and which have the potential to contaminate such aquifer. EPA's role is to review the projects and either approve as-is, or recommend changes in the project design that offer aquifer protection. Such recommended changes in project designs could have an indirect impact on local land use. EPA's direct role in local projects is solely the technical review of federally-financially assisted projects.

VI. Summary

This determination affects only the Troutdale Aquifer System located in Clark County, Washington. As a result of this determination, all Federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

Dated: August 14, 2006.

Ron Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. E6–14710 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–1728]

Tenth Meeting of the Advisory Committee for the 2007 World Radiocommunication Conference (WRC–07 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the tenth meeting of the WRC–07 Advisory Committee will be held on October 4, 2006, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2007 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and draft proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: October 4, 2006; 11 a.m.–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC–07).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the tenth meeting of the WRC–07 Advisory Committee. The WRC–07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the tenth meeting is as follows:

Agenda

Tenth Meeting of the WRC–07 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

October 4, 2006; 11 a.m.–12 noon

1. Opening Remarks.
2. Approval of Agenda.
3. Approval of the Minutes of the Ninth Meeting.
4. Status of Preliminary Views and Draft Proposals.
5. Reports on Recent WRC–07 Preparatory Meetings.
6. NTIA Draft Preliminary Views and Proposals.
7. Informal Working Group Reports and Documents relating to:
   a. Consensus Views and Issues Papers.
   b. Draft Proposals.
8. Future Meetings.
9. Other Business.

Federal Communications Commission.

John Giusti,

Acting Chief, International Bureau.

[FR Doc. 06–7392 Filed 9–5–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on this agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011346–017.

Title: Israel Trade Conference Agreement.

Parties: A.P. Moller-Maersk A/S and Zim Integrated Shipping Services, Ltd.

Filing Party: Marc J. Fink, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes Farrell Lines, Inc. as a party to the agreement.

By order of the Federal Maritime Commission.

Dated: August 31, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–14740 Filed 9–5–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to

section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 018678N.
Name: Air Trans Logistics (USA) Inc.
Address: 230–59 Int'l Airport Center Blvd., Suite 190, Springfield Gardens, NY 11413.
Date Revoked: July 26, 2006.
Reason: Failed to maintain a valid bond.

License Number: 014151N.
Name: Continental Consolidating Corporation.
Address: 8507 NW 72nd Street, Miami, FL 33166.
Date Revoked: July 22, 2006.
Reason: Failed to maintain a valid bond.

License Number: 015565N.
Name: International Equipment Logistics, Inc.
Address: 210 East Essex Avenue, Avenel, NJ 07001.
Date Revoked: July 21, 2006.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.
[FR Doc. E6–14720 Filed 9–5–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel–Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicant

Rathbourne Express Inc., 72 East Suffolk Avenue, Central Islip, NY 11722. Officers: Basil Peat, President (Qualifying Individual), Nichola Peat, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

American Pacific Moving Services, Inc., 1500 Industry Street, Suite 300, Everett, WA 98203. Officer: Heino Preissler, Vice President (Qualifying Individual).

Stereo International Retail and Shipping, Inc., 420 Taunton Avenue, East Providence, RI 02914. Officers: Paul J. Santos, President (Qualifying Individual), Suzette F. Santos, Vice President.

Interport Freight Systems, Inc. dba Interport Freight Systems, 12923 Cerise Avenue, Hawthorne, CA 90250. Officer: Robin Vandeveer, President (Qualifying Individual).

Dated: August 31, 2006.

Karen V. Gregory,
Assistant Secretary.
[FR Doc. E6–14721 Filed 9–5–06; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Smith & Associates Florida Fund LLC, Smith & Associates Fund Management LLC, and Florida Shores Bancorp, Inc., all of Pompano Beach, Florida; to become bank holding companies by acquiring 60 percent of the voting shares of Florida Shores Bank – Southeast, Pompano Beach, Florida (in organization).

Board of Governors of the Federal Reserve System, August 31, 2006.

Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. E6–14692 Filed 9–5–06; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New; 60-day Notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection 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.

Type of Information Collection Request: New collection;
Title of Information Collection: Evaluation of the National Abstinence Media Campaign.
Form/OMB No.: OS–0990–NEW;

Use: The purpose of the data collection and evaluation is to determine the efficacy of the National Abstinence Media Campaign and its messages upon parents, specifically to encourage and help parents talk to their pre-teens and teens about waiting to have sex.

The following outcomes will be examined: perceived risks from teen sexual activity, perceived susceptibility, attitude towards teen sexual activity, self-efficacy to talk to their child, outcome efficacy, perceived value of delayed sexual activity, and parent-child communication about sex.

Frequency: Reporting, Occasion;

Affected Public: Individuals or Households;

Annual Number of Respondents: 947.5;

Total Annual Responses: 3,493.5;

Average Burden per Response: 30 min;

Total Annual Hours: 1,746.75;

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Research and Technology, Office of Information and Resource Management, *Attention:* Sherrette Funn-Coleman (0990–NEW), Room 537–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: August 25, 2006.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–14667 Filed 9–5–06; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Biosurveillance Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the ninth meeting of the American Health Information Community Biosurveillance Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: September 21, 2006 from 1 p.m. to 5 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. [Please bring photo ID for entry to a Federal building.]

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/bio_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BId=67.*

Dated: August 28, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–7452 Filed 9–5–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup Meeting

ACTION: Meeting announcement.

SUMMARY: This notice announces the first meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.). The Quality Workgroup was created to make recommendations to the American Health Information Community on how HIT can: Provide data for the development of quality measures that are useful to patients and others in the health care industry; automate the measurement and reporting of a comprehensive current and future set of quality measures; and accelerate the use of clinical decision support that will improve performance using quality measures. The workgroup's initial charge will be to make recommendations to the American Health Information Community that specify how certified health information technology should capture, aggregate, and report data for a core set of ambulatory and in-patient quality measures.

Date/Time: September 22, 2006, 11 a.m. to 2 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. (Please bring photo ID for entry to a Federal building.)

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/workgroups.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: August 29, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 06–7453 Filed 9–5–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the ninth meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App).

DATES: September 19, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. [Please bring photo ID for entry to a Federal building.]

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/ehr_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: August 28, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–7454 Filed 9–5–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator; American Health Information Community Chronic Care Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the ninth meeting of the American Health Information Community Chronic Care Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.).

DATES: September 20, 2006 from 1 p.m. to 4 p.m.

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. [Please bring photo ID for entry to a Federal building.]

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/cc_main.html.*

SUPPLEMENTARY INFORMATION: The meeting will be available via Web cast at *http://www.eventcenterlive.com/cfmx/ec/login/login1.cfm?BID=67.*

Dated: August 29, 2006.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator.

[FR Doc. 06–7455 Filed 9–5–06; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0185]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Informed Consent for In Vitro Diagnostic Device Studies Using Leftover Human Specimens That Are Not Identifiable

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by October 6, 2006.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Guidance on Informed Consent for In Vitro Diagnostic Device Studies Using Leftover Human Specimens that Are Not Individually Identifiable—(OMB Control Number 0910–0582)—Extension

FDA's investigational device regulations are intended to encourage the development of new, useful devices in a manner that is consistent with public health, safety and with ethical standards. Investigators should have freedom to pursue the least burdensome means of accomplishing this goal. However, to ensure that the balance is maintained between product development and the protection of public health, safety and ethical standards, FDA has established human subject protection regulations addressing requirements for informed consent and Institutional Review Committee (IRB) review that apply to all FDA-regulated clinical investigations involving human subjects. In particular, informed consent requirements further both safety and ethical considerations by allowing potential subjects to consider both the physical and privacy risks they face if they agree to participate in a trial.

Under FDA regulations, clinical investigations using human specimens conducted in support of premarket submissions to FDA are considered human subject investigations (see 21 CFR 812.3(p)). Many investigational device studies are exempt from most provisions of part 812 (21 CFR part 812), Investigational Device Exemptions, under § 812.2(c)(3), but FDA's regulations for the protection of human subjects (parts 50 and 56 (21 CFR parts 50 and 56)) apply to all clinical investigations that are regulated by FDA (see §§ 50.1 and 56.101, 21 U.S.C. 360j(g)(3)(A) and (g)(3)(D)).

FDA regulations do not contain exceptions from the requirements of informed consent on the grounds that the specimens are not identifiable or that they are remnants of human specimens collected for routine clinical care or analysis that would otherwise have been discarded. Nor do FDA regulations allow IRBs to decide whether or not to waive informed consent for research involving leftover or unidentifiable specimens.

In a level 1 guidance document issued under the good guidance practices (GGP) regulations (21 CFR 10.115), FDA outlines the circumstances in which it intends to exercise enforcement discretion as to the informed consent regulations for clinical investigators, sponsors, and IRBs.

In the **Federal Register** of May 19, 2006 (71 FR 29158), FDA published a 60-day notice requesting comments on the information collection provisions. In response to this notice, no comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

No. of Recordkepers	Annual Frequency per Recordkeeper	Total annual Records	Hours per Record	Total Hours	Total Capital Cost	Total Operating and Maintenance Cost
700	1	700	4	2,800	$210,000	$210,000

The recommendations of this guidance impose a minimal burden on industry. FDA estimates that 700 studies will be affected annually. Each study will result in one recordkeeping per year, estimated to take 4 hours to complete. This results in a total recordkeeping burden of 2,800 hours. (700 x 4 = 2,800). FDA estimates that the cost of developing standard operating procedures (SOPs) for each recordkeeper is $300 (6 hours of work x $50 /hour. This results in a total operational and maintenance cost to industry of $210,000 ($300 x 700 recordkeepers). The total cost of this recordkeeping (i.e., capital cost plus operational and maintenance cost) is estimated to be $420,000.

Dated: August 28, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–14671 Filed 9–5–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL).

Dates and Times: September 28, 2006, 1 to 5 p.m.; September 29, 2006, 1 to 5 p.m.

Place: Teleconference meeting.

Status: The meeting will be open to the public.

Purpose: The Committee will be focusing on interdisciplinary training and education, specifically examining evidence-based models/research as regards interdisciplinary training and community-based training programs. In addition, the Committee will be looking at the potential impact of interdisciplinary training programs on health service delivery networks including how such training programs address the needs of various underserved populations. The meeting will allow Committee members to discuss and finalize appropriate findings and recommendations to be included in an annual report to the Secretary and Congress regarding interdisciplinary and/or community-based training.

Agenda: The agenda includes an overview of the Committee's general business activities and minutes of the prior meeting. The Committee will review recommendations that are being developed following the testimony provided by experts on interdisciplinary training and/or community-based training during the Advisory Committee meeting held on July 24–25, 2006.

The recommendations discussed, when finalized, will be prepared as a report to the Secretary and the Congress.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requesting information regarding the Committee meeting should contact Lou Coccodrilli, Federal Official for the ACICBL, and Acting Director of the Division of State, Community & Public Health, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone (301) 443–6590. Vanessa Saldanha, ASPH Fellow, can also be contacted at *vsaldanha@hrsa.gov* or via telephone at (301) 443–6529.

Dated: August 29, 2006.

Cheryl R. Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–14747 Filed 9–5–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: September 14, 2006, 12 p.m.–5 p.m.; September 15, 2006, 9 a.m.–5 p.m.; September 16, 2006, 9 a.m.–5 p.m.; and September 17, 2006, 9 a.m.–12 p.m.

Place: Hyatt Regency Reston, 1800 Presidents Street, Reston, VA 20190.

Status: The meeting will be open to the public.

Agenda: This Council meeting is being held in conjunction with the annual NHSC Loan Repayors Conference. The Council will have the chance to meet with clinicians in the field as well as work on their report outlining some recommendations for the National Health Service Corps Program. Discussions will be focused on the impact of these recommendations on the program participants, communities served by these clinicians and in the administration of the program.

For Further Information Contact: Tira Robinson-Patterson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, MD 20857; telephone: (301) 594–4140.

Dated: August 29, 2006.

Cheryl Dammons,

Director, Division of Policy Review and Coordination.

[FR Doc. E6–14752 Filed 9–5–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority; Correction

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Health Resources and Services Administration published a document in the **Federal Register** on August 11, 2006, concerning changes to the organization and functions of the Office of the Administrator (RA) and the HIV/AIDS Bureau (RV). The document omitted information regarding movement of the Center for Quality and also erroneously included the Telehealth function within the HIV/AIDS Bureau, which was moved to the Office of Health Information Technology (RT) on 12/27/05 (70 FR 76463–76465).

FOR FURTHER INFORMATION CONTACT: Wendy Ponton, Director, Division of Management Services, Office of Administration and Financial Management, Health Resources and Services Administration, 5600 Fishers Lane, Room 14A–08, Rockville, Maryland 20857; telephone: 301–443–0201.

Correction

In the **Federal Register** issue of August 11, 2006, in FR Doc. E6–13216, on page 46237, in the second column, correct the second paragraph in the Statement of Organization, Functions and Delegations of Authority section to read: This notice reflects changes to the organization and functions of the Office of the Administrator (RA) and the HIV/AIDS Bureau (RV). Specifically, it moves the Center for Quality function from the HIV/AIDS Bureau to the Office of the Administrator.

On page 46237, in the third column, under Section RV–20, Functions, delete item (10), and renumber list accordingly.

Dated: August 30, 2006.

Elizabeth M. Duke,

Administrator.

[FR Doc. E6–14748 Filed 9–5–06; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Preventing Motor Vehicle Crashes Among Young Drivers

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 13, 2006, page 34142, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Preventing Motor Vehicle Crashes Among Young Drivers, OMB No. 0925–new.

Type of Information Collection Request: New.

Need and Use of Information Collection: Motor vehicle crash risk is particularly elevated among novice young drivers during the first six months and 1000 miles of independent driving. Previously, researchers in the Prevention Research Branch of the NICHD have demonstrated the efficacy of the Checkpoints Program for increasing parental management of teen driving and reducing exposure to high risk driving conditions during the first 12 months after licensure. The current research seeks to test the effectiveness of providing an educational program entitled The Checkpoints Program to facilitate parental management of teen driving when delivered at motor vehicle administration offices at the time the teen obtains a permit, at the time of license, or at both permit and license.

Frequency of Response: 3 times over two years.

Affected Public: Individuals or households.

Type of Respondents: Adolescents and parents/guardians.

The annual reporting burden is as follows: Estimated Number of Respondents: 4000; *Estimated Number of Responses per Respondent:* 3; *Average Burden Hours Per Response:* 35; and *Estimated Total Annual Burden Hours Requested:* 4,200. The annualized cost to respondents is estimated at: $42,000 (based on $10 per hour).

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Parents/guardians	2000	3	.35	2100
Teens	2000	3	.35	2100
Total	4000	3	.35	4200

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bruce Simons Morton, Chief, Prevention Research Branch, DESPR, NICHD, NIH, 6100 Executive Blvd., Rm 7B05, MSC 7510, Bethesda, MD 20892–7510; (301) 496–5674; e-mail: *mortonb@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: August 25, 2006.

Paul Johnson,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. E6–14680 Filed 9–5–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

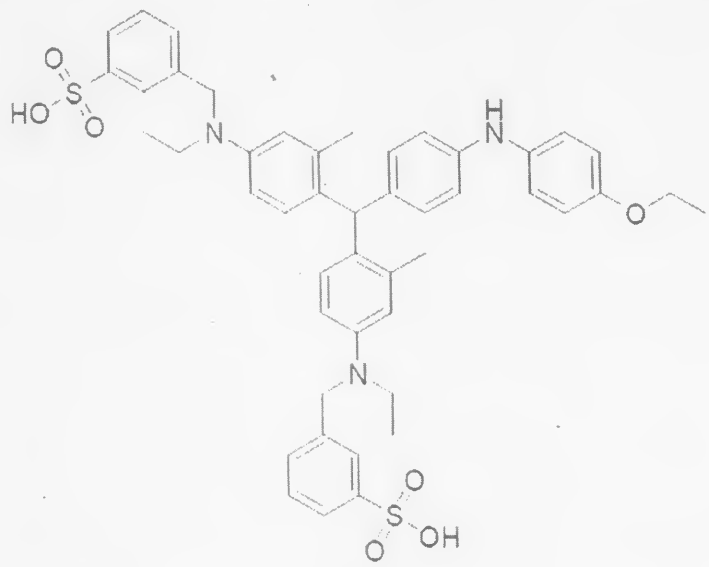
ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/

496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Ghost Native-PAGE With Colorless Compound Derived From Coomassie Brilliant Blue

Description of Technology: Protein staining dyes such as serva blue G or Coomassie blue are used to enhance the separation of protein complexes by binding to the proteins and differentially enhancing the net charge of the complexes improving the separation of the complexes using electrophoresis procedures. However, the intense blue color of Coomassie stains interferes with immunobloting and in gel colormetric or fluorescent studies. Available for licensing and commercial development is a colorless molecule that will bind and enhance the differential surface charge on protein complexes. The molecule has been demonstrated to work as well as Coomassie blue but will not interfere in gel assays critical for most investigations. This approach provides biochemists interested in protein complexes in biological tissues with the ability to separate protein complexes and perform in gel assays saving time and resources in this important emerging field.

The compound and methods of its use is for polyacrylamide gel electrophoresis (PAGE) and related gel techniques for the analysis of protein complexes and defects in the same. Such analysis can be extended to the detection of various diseases, e.g., Alzheimer's disease or Parkinson's disease. One such compound has the following formula:



Applications: Alzheimer's disease diagnostics; Parkinson's disease diagnostics.

Market: Protein-protein interaction biochemistry.

Development Status: Early-stage.

Inventors: Robert Balaban (NHLBI), Gary Griffiths (NHLBI), Ksenia Blinova (NHLBI), et al.

Publications:

1. MM Camacho-Carvajal, et al. Two-dimensional Blue native/SDS gel electrophoresis of multi-protein complexes from whole cellular lysates: a proteomics approach. Mol Cell Proteomics. 2004 Feb; 3(2):176–182.

2. R Van Coster, et al. Blue native polyacrylamide gel electrophoresis: a powerful tool in diagnosis of oxidative phosphorylation defects. Pediatr Res. 2001 Nov; 50(5):658–665.

3. I Whittig and H Schagger. Advantages and limitations of clear-native PAGE. Proteomics. 2005 Nov; 5(17):4338–4346.

Patent Status: U.S. Provisional Application No. 60/835,069 filed 03 Aug 2006 (HHS Reference No. E–218–2006/0-US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301/435–5019; *shmilovm@mail.nih.gov.*

In Vivo Non-Invasive Diagnostic Method Using Magnetic Resonance Spectroscopy of Aspartate Transaminase

Description of Technology: This invention describes a method for non-invasively diagnosing various diseases using magnetic resonance spectroscopy of aspartate transaminase (AST). The diagnostic market is a multi-billion dollar market, with a need for more efficient non-invasive techniques, markers and methods of diagnosis.

In particular, this is a novel non-invasive method for using carbon-13 magnetization transfer effects to determine and evaluate in vivo aspartate transaminase (AST) activity and levels in an organ, including the brain, as a biomarker of disease and certain neurological disorders. This comprises performing in vivo magnetization transfer spectroscopy, and determining the change in magnetic resonance signal intensity of reactants in AST catalyzed reaction.

AST activity is known to change as a result of tissue damage and necrosis in a variety of diseases. AST activity is routinely assessed in serum of patients as a non-invasive means of identifying and following up on disease progression. Furthermore, brain levels of AST are altered in certain diseases such as Huntington's Disease, olivopontocerebellar atrophy and epilepsy, but the blood-brain barrier prevents AST from entering serum and being readily measured. Brain AST levels in living patients can be measured by brain biopsies, which are expensive and dangerous. This invention overcomes this problem by measuring AST activity in the brain by using magnetization transfer effect. This

can help diagnose or follow up on the progress of a variety of diseases, including Huntington's Disease, olivopontocerebellar atrophy, epilepsy, schizophrenia, as well as hepatitis, cirrhosis, cholangitis, Gilbert's diseases, muscular dystrophy, leukemia, kidney inflammation, cardiac infarction, or the presence of a tumor. Thus, tissue AST activity may become a novel marker of brain disorders which has been inaccessible using current clinical technologies.

Applications and Market: Diagnosis and monitoring disease status in a variety of diseases, including Huntington's Disease, olivopontocerebellar atrophy, epilepsy, schizophrenia, as well as hepatitis, cirrhosis, cholangitis, Gilbert's diseases, muscular dystrophy, leukemia, kidney inflammation, cardiac infarction, or the presence of a tumor. The diagnostic market is a multi-billion dollar market, with a need for more efficient non-invasive techniques, markers and new methods of diagnosis.

Patent Status: U.S. Patent Application No. 11/356,214 filed 21 Feb 2006 (HHS Reference No. E–231–2005/0–US–02).

Inventors: Dr. Jun Shen (NIMH).

Publication: J Shen. In vivo carbon-13 magnetization transfer effect: detection of aspartate aminotransferase reaction. Magn Reson Med. 2005 Dec; 54(6):1321–1326.

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Chekesha Clingman, Ph.D.; 301/435–5018; *clingman@mail.nih.gov*.

Dated: August 29, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 06–7439 Filed 9–5–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council for Complementary and Alternative Medicine, September 8, 2006, 9 a.m. to September 8, 2006, 4 p.m., National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Rooms C & D, Rockville, MD 20852, which was published in the **Federal Register** on July 28, 2006, 71 FR 42860.

This meeting is being amended due to the start time change for the Open session from 2 p.m. to 1:30 p.m. The meeting is partially Closed to the public.

Dated: August 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7436 Filed 9–5–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Eating Disorders Grant Application Review.

Date: September 29, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Bettina D. Osborn, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20852–9609, 301–443–1178, *acunab@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mental Health Centers for Intervention Development and Applied Research (CIDAR).

Date: October 12–13, 2006.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Park Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: A. Roger Little, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6157, MSC 9609, Rockville, MD 20852–9609, 301–402–5844, *alittle@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7434 Filed 9–5–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of changes in the meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council, September 20, 2006, 8:30 a.m. to September 21, 2006, 12 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, which was published in the **Federal Register** on August 18, 2006, 71 FR 47820–47821.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 20–21, 2006.

Open: September 20, 2006, 8:30 a.m. to 12 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: September 20, 2006, 4 p.m. to 5 p.m.

Agenda: Report from the NIH Director.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: September 21, 2006, 9:45 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: September 21, 2006, 10:15 a.m. to 12 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd.,

Rm. 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Diabetes, Endocrinology, and Metabolic Diseases Subcommittee.

Date: September 20–21, 2006.

Open: September 20, 2006, 1 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: September 21, 2006, 8 to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Rm. 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Digestive Diseases and Nutrition Subcommittee.

Date: September 20–21, 2006.

Closed: September 20, 2006, 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892

Open: September 20, 2006, 2:30 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892.

Open: September 21, 2006, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Rm. 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council; Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: September 20–21, 2006.

Open: September 20, 2006, 1 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892.

Closed: September 20, 2006, 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892

Open: September 21, 2006, 8 a.m. to 9:30 a.m.

Agenda: Continuation of the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 9A22, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd., Rm. 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 98.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 28, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–7435 Filed 9–5–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: New Information Collection, Comment Request

ACTION: 30-day notice of information collection under review: CIS Ombudsman Case Problem Submission Worksheet, Form DHS–7001 (Previously published as Form G–1107). OMB Control No. 1615–NEW.

The Department of Homeland Security, Office of the Citizenship and Immigration Services (CIS) Ombudsman has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 29, 2006, at 71 FR 37085. The notice allowed for a 60-day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 6, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add DHS–7001 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* CIS Ombudsman Case Problem Submission Worksheet.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS–7001. Office of the Citizenship and Immigration Services Ombudsman.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection is necessary for the CIS Ombudsman to identify problem areas, propose changes, and assist individuals experiencing problems during the processing of an immigration benefit with USCIS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,600 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,600 annual burden hours.

If you have comments, please submit them to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the DHS desk officer at:

kastrich@omb.eop.gov, or fax to 202–395–6974. If you need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: August 31, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–14702 Filed 9–5–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of Grants and Training; Assistance To Firefighters Grant Program

AGENCY: Office of Grants and Training, DHS.

ACTION: Notice of guidance.

SUMMARY: The Department of Homeland Security is publishing this Notice to provide details and guidance regarding the 2006 program year Assistance to Firefighters Grant Program. The program makes grants directly to fire departments and nonaffiliated emergency medical services organizations for the purpose of enhancing first-responders' ability to protect the health and safety of the public as well as that of first-responder personnel facing fire and fire-related hazards. As in prior years, this year's grants are awarded on a competitive basis to the applicants that best reflect the program's criteria and funding priorities and best address statutory award requirements. This Notice describes the criteria and funding priorities recommended by a panel of representatives from the Nation's fire service leadership (criteria development panel) and accepted by the Department of Homeland Security, unless otherwise noted herein. This Notice contains details regarding the guidance and competitive process descriptions that have been provided to applicants and also provides information on where and why the Department deviated from recommendations of the criteria development panel.

Authority: 15 U.S.C. 2229, 2229a.

FOR FURTHER INFORMATION CONTACT: Brian Cowan, Director, Assistance to Firefighters Program Office, Office of Grants and Training, 810 Seventh Street, NW., Washington, DC 20531

SUPPLEMENTARY INFORMATION:

Appropriations

For fiscal year 2006, Congress appropriated $539,550,000 to carry out the activities of the Assistance to Firefighters Grant Program (AFG Program).[1] The Department of Homeland Security (DHS) is authorized to spend up to $26,977,500 for administration of the AFG program (five percent of the appropriated amount). In addition, DHS has set aside no less than $26,977,500 of the funds (five percent of the appropriation) for the Fire Prevention and Safety Grants in order to make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention and injury prevention programs. This leaves approximately $485,595,000 for competitive grants to fire departments and nonaffiliated Emergency Medical Service (EMS) organizations. Within the portion of funding available for competitive grants, DHS must assure that no less than three and one-half percent of the appropriation, or $18,884,250, is awarded for EMS equipment and training. However, awards to nonaffiliated emergency medical service (EMS) organizations are limited to no more than two percent of the appropriation or $10,791,000. Therefore, at least the balance of the requisite awards for EMS equipment and training must go to fire departments.

Background

The purpose of the AFG program is to award grants directly to fire departments and nonaffiliated EMS organizations to enhance their ability to protect the health and safety of the public, as well as that of first-responder personnel, with respect to fire and fire related hazards. DHS awards the grants on a competitive basis to the applicants that best address the AFG program's priorities and provide the most compelling justification. Applicants whose requests best address the program's priorities were reviewed by a panel made up of fire service personnel. The panel reviewed the narrative and assessed the application with respect to the clarity of the project to be funded, the organization's financial need, the benefit to be derived from their project, and the extent to which the grant would enhance the applicant's daily operations and/or how the grant would positively impact the applicant's ability to protect life and property.

The AFG Program for fiscal year 2006 generally mirrors previous years' programs with only one significant change. The only significant change is in the formulation of what the program has referred to as a "regional project." A regional project, generally, is a project undertaken by an applicant to provide services and support to a number of other regional participants, such as training for multiple mutual-aid jurisdictions. For the 2006 program year, organizations that applied as a host of a regional project were not able to include activities unrelated to the regional project, *e.g.*, activities to address specific needs of the host applicant versus the region. Also, the host applicant was required to reflect the general characteristics of the entire represented region. The population covered by the regional project affected the amount of required local contribution to the project, *i.e.* the cost-share required for the project.

The 2006 program will again segregate the Fire Prevention and Safety Grant (FP&S) program from the AFG. DHS will have a separate application period devoted solely to Fire Prevention and Safety in the Fall of 2006. The AFG Web site (*www.firegrantsupport.com*) will provide updated information on this program.

Congress has enacted statutory limits to the amount of funding that a grantee may receive from the AFG Program in any fiscal year.[2] 15 U.S.C. 2229(b)(10). These limits are based on population served. A grantee that serves a jurisdiction with 500,000 people or less may not receive grant funding in excess of $1,000,000 in any fiscal year. A grantee that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people may not receive grants in excess of $1,750,000 in any fiscal year. A grantee that serves a jurisdiction with more than 1,000,000 people may not receive grants in excess of $2,750,000 in any fiscal year. DHS may waive these established limits to any grantee serving a jurisdiction of 1,000,000 people or less if DHS determines that extraordinary need for assistance warrants the waiver. No

[1] All appropriated fund amounts are net of rescissions after enactment of the original appropriation.

[2] Federal Fire Protection and Control Act of 1974, Pub. L. 93–498, § 33, as added Pub. L. 106–398, § 1 [Div. A, Title XVII, § 1701(a)] 114 Stat. 1654, 1654A–360 (2000), as amended Pub. L. 107-107, Div. A, Title X, § 1061, 115 Stat. 1231 (2001); Pub. L. 108–7, Div. K, Title IV, § 421, 117 Stat. 526 (2003); Pub. L. 108–169, Title II, § 205, 117 Stat. 2040 (2003); Pub. L. 108–375, Div. C, Title XXXVI, § 3602, 118 Stat. 2195 (2004)., found at and hereafter cited as 15 U.S.C. 2229.

grantee, under any circumstance, may receive "more than the lesser of $2,750,000 or one half of one percent of the funds appropriated under this section for a single fiscal year." In fiscal year 2006, no grantee may receive more than $2,697,750.

Grantees must share in the costs of the projects funded under this grant program. 15 U.S.C. 2229(b)(6). Fire departments and nonaffiliated EMS organizations that serve populations of less than 20,000 must match the Federal grant funds with an amount of non-Federal funds equal to five percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving areas with a population between 20,000 and 50,000, inclusive, must match the Federal grant funds with an amount of non-Federal funds equal to ten percent of the total project cost. Fire departments and nonaffiliated EMS organizations that serve populations of over 50,000 must match the Federal grant funds with an amount of non-Federal funds equal to twenty percent of the total project costs. All non-Federal funds must be in cash, *i.e.*, in-kind contributions are not eligible. No waivers of this requirement will be granted except for applicants located in Insular Areas as provided for in 48 U.S.C. 1469a.

The law imposes additional requirements on ensuring a distribution of grant funds among career departments and combination/volunteer fire departments, and among urban, suburban and rural communities. More specifically with respect to department types, DHS must ensure that all-volunteer or combination (volunteer and career personnel) fire departments receive a portion of the total grant funding that is not less than the proportion of the United States population that those departments protect. 15 U.S.C. 2229(b)(11). There is no corresponding minimum for career departments. Therefore, DHS will ensure that, for the 2006 program year, no less than 53.5 percent of the funding available for grants will be awarded to volunteer and combination departments.

DHS generally makes funding decisions using rank order resulting from the panel evaluation. However, DHS may deviate from rank order and make funding decisions based on the type of department (career, combination, or volunteer) and/or the size and character of the community the applicant serves (urban, suburban, or rural) to the extent it is required to satisfy statutory provisions.

Fire Prevention and Safety Grant Program

In addition to the grants available to fire departments in fiscal year 2006 through the competitive grant program, DHS will set aside no less than $26,977,500 of the funds available under the AFG Program to make grants to, or enter into contracts or cooperative agreements with, national, State, local or community organizations or agencies, including fire departments, for the purpose of carrying out fire prevention and injury prevention programs.

In accordance with the statutory requirement to fund fire prevention activities, support to Fire Prevention and Safety Grant activities concentrates on organizations that focus on the prevention of injuries to children from fire. In addition to this priority, DHS places an emphasis on funding innovative projects that focus on protecting children under fourteen, seniors over sixty-five, and firefighters. Because the victims of burns experience both short- and long-term physical and psychological effects, DHS places a priority on programs that focus on reducing the immediate and long-range effects of fire and burn injuries.

DHS will issue an announcement regarding pertinent details of the Fire Prevention and Safety Grant portion of this program prior to the application period. Interested parties should monitor the grant program's Web site at www.firegrantsupport.com.

Application Process

Prior to the start of the application period, DHS conducted applicant workshops across the country to inform potential applicants about the AFG program for FY2006. In addition, DHS made available an online web-based applicant tutorial, and other information for applicants to use in preparing a quality application. Applicants were advised to access the application electronically at *https://portal.fema.net,* or through the AFG Web site at *www.firegrantsupport.com.* In completing the application, an applicants provided relevant information on the applicant's characteristics, call volume, and existing capacities. Applicants answered questions about their assistance request that reflect the funding priorities (iterated below). In addition, each applicant completed a narrative addressing statutory competitive factors: Financial need, benefits/costs, and improvement to the organization's daily operations. During the application period, applicants were encouraged to contact either a toll free number or e-mail help desk with any questions. The electronic application process permitted the applicant to enter data and save the application for further use, and did not permit the submission of applications that are incomplete. Except for the narrative, the application was a "point-and-click" selection process, or required the entry of information (*e.g.*, name & address, call volume numbers, etc.).

The application period for the AFG grants opened on March 6, 2006, and closed on April 7, 2006. During this application season, the program office received over 18,000 applications. Statistics on the type of department, type of community, and other factors can be found on the AFG Web site: *http://www.firegrantsupport.com/docs/2006AFGAppStats.pdf.* All applications were evaluated in the preliminary screening process to determine which applications best addressed the program's announced funding priorities. This preliminary screening was based on the applicants' answers to the activity-specific questions. Each activity within an application was scored. Applications containing multiple activities were given prorated scores based on the amount of funding requested for each activity.

The best applications as determined in the preliminary step were deemed to be in the "competitive range." All applications in the competitive range were subject to a second level review by a technical evaluation panel made up of individuals from the fire service including, but not limited to, firefighters, fire marshals, and fire training instructors. The panelists assessed the application's merits with respect to the clarity and detail provided in the narrative about the project, the applicant's financial need, the project's purported benefit to be derived from the cost, the effectiveness of the project to enhance the health and safety of the public and fire service personnel.

Using the evaluation criteria included here, the panelists independently scored each application before them and then discussed the merits and shortcomings of the application in an effort to reconcile any major discrepancies. A consensus on the score was not required. The assigned score reflected how well the applicant clearly related the proposed project including the project's budget; demonstrated financial need; detailed a high benefit to cost ratio of the proposed activities; and demonstrated significant enhancements to the daily operation of the organization and/or how the grant would positively impact the applicant's

ability to protect life and property. The panel then considered the highest scoring applications resulting from this second level of review for award.

DHS will select a sufficient number of awardees from this one application period to obligate all of the available grant funding. DHS will announce awards over several months and will notify applicants that are not to receive funding as soon as feasible. DHS will not make awards in any specified order, *i.e.*, not by State, nor by program, nor any other characteristic.

Criteria Development Process

Each year, the grants program office conducts a criteria development meeting to develop the program's priorities for the coming year. DHS brings together a panel of fire service professionals representing the leadership of the nine major fire service organizations:

- International Association of Fire Chiefs (IAFC),
- International Association of Firefighters (IAFF),
- National Volunteer Fire Council (NVFC),
- National Fire Protection Association (NFPA),
- National Association of State Fire Marshals (NASFM),
- International Association of Arson Investigators (IAAI),
- North American Fire Training Directors (NAFTD),
- International Society of Fire Service Instructors (ISFSI),
- Congressional Fire Service Institute (CFSI).

The criteria development panel is charged with making recommendations to the grants program office regarding the creation and/or modification of program priorities as well as development of criteria and definitions as necessary.

The governing statute requires that we publish each year in the **Federal Register** the guidelines that describe the process for applying for grants and the criteria for awarding grants. DHS must also include an explanation of any differences between the published guidelines and the recommendations made by the criteria development panel. The guidelines and the statement on the differences between the guidelines and the criteria development panel recommendations must be published in the **Federal Register** prior to making any grants under the program. 15 U.S.C. 2229(b)(14).

Accordingly, DHS provides the following explanation of its decisions to modify or decline to adopt the criteria development panel's recommendations:

- In the vehicle acquisition program, DHS differed with the recommendations made by the criteria development panel for the 2006 grants to adjust the highest priorities for urban fire departments to include command vehicles. DHS has determined to keep the previously established priorities for the vehicle acquisition program in place. DHS found the recommended changes for the 2006 grants to be, at the present time, too broad and not sufficiently defined to enable the program office to effectively implement these recommendations.
- In the modifications-to-facilities category, the criteria development panel has provided DHS with a directory of initiatives that they would like DHS to consider as eligible. DHS has elected to stay with a relatively shorter list of eligible initiatives (vehicle exhaust extraction systems, sprinkler systems, smoke/fire alarm systems, and emergency generators). DHS has limited the number of initiatives to those that will provide the most protection for firefighting and emergency responders versus providing a more comfortable working environment. DHS has limited the number of eligible initiatives because any modification to a facility may need to undergo an environmental and/or historic review.
- Also under the modifications-to-facilities category, the criteria development panel recommended that the grant program fund the installation of sprinkler systems in new construction to reinforce the importance of sprinkler systems. While DHS supports this type of mitigation, the authorizing legislation does not provide for funding of new construction. Therefore, DHS did not implement this recommendation.

There were several other minor modifications that DHS made to the recommendations of the criteria development panel. These changes or modifications were presented to the panel and the panel concurred with the changes.

In making these modifications, DHS looks to the broader Administration priorities established in Homeland Security Presidential Directive 8 (HSPD 8), 39 *Weekly Comp. Pres. Docs.* 1822 (Dec. 17, 2003). DHS is mindful of the differences between the AFG statutory mandates and HSPD–8 priorities, such as the statutory requirement that DHS make AFG grants directly to fire departments and non-affiliated EMS organizations, as contrasted with the HSPD–8 preference for funding through the States. However, the AFG is consistent with the National Preparedness Goal called for by HSPD–8 by prioritizing investments based upon the assessment of an applicant's need and capabilities to effectively prepare for, and respond to all hazards, including terrorism threats, and a consideration of the characteristics of the community served (*e.g.* presence of critical infrastructure, population served, call volume) to the extent permitted by law. To the extent practical, AFG has attempted to harmonize the directions from the President and the Secretary with the requirements and limitations of the authorization and the structure of the fire service. Assets devoted to basic firefighting should complement all aspects of responding to the more complex chemical / biological / radiological / nuclear / explosive (CBRNE) threat.

Review Considerations

Fire Department Priorities

Specific rating criteria for each of the eligible programs and activities are discussed below. The funding priorities described in this Notice have been recommended by a panel of representatives from the Nation's fire service leadership and have been accepted by DHS for the purposes of implementing the AFG. These rating criteria provide an understanding of the grant program's priorities and the expected cost-effectiveness of any proposed projects.

(1) Operations and Firefighter Safety Program

(i) *Training Activities.* In implementing the fire service's recommendations, DHS has determined that the most benefit is derived from training that is instructor-led, hands-on, and leads to a nationally-sanctioned or State certification. Training requests that include Web-based home study or distance learning, and the purchase of training materials, equipment, or props are a lower priority. Therefore, applications focused on national or State certification training, including train-the-trainer initiatives, received a higher competitive rating. Training that (1) involves instructors, (2) requires the students to demonstrate their grasp of knowledge of the training material via testing, and (3) that is integral to a certification received a high competitive rating. Training that would lead to national certification received a higher competitive rating. Instructor-led training that does not lead to a certification, and any self-taught courses, are of lower benefit, and therefore were not afforded a high priority.

Applications were rated more highly if the proposed programs would benefit the highest percentage of applicable personnel within a fire department or if the proposed programs would be open to other departments in the region. Training that brings the department into statutory (or OSHA) compliance would provide the highest benefit relative to training that is not required, and, therefore, received the highest consideration. Training that brings a department into voluntary compliance with national standards also received a high competitive rating, but not as high as the training that brings a department into statutory compliance. Training that does not achieve statutory compliance or voluntary compliance with a national standard received a low competitive rating.

Due to the inherent differences between urban, suburban, and rural firefighting characteristics, DHS has accepted the recommendations of the criteria development panel on the different priorities in the training activity for departments that service these different types of communities. However, CBRNE awareness training has a high benefit and received the highest consideration regardless of the type of community served.

For fire departments serving rural communities, DHS has determined that funding basic, operational-level firefighting, operational-level rescue, driver training, and first-responder EMS, EMT–B, and EMT–I training (*i.e.*, training in basic firefighting and rescue duties) has greater benefit than funding officer training, safety officer training, or incident-command training. In rural communities, after basic training, there is a greater cost-benefit ratio for officer training than for other specialized types of training such as mass casualty, HazMat, advance rescue and EMT–P, or inspector training for rural departments.

Conversely, for departments that are serving urban or suburban communities, DHS has determined that, due to the number of firefighters and the relatively-high population protected, any training requests received the highest priority regardless of the level of training requested. Training designated to enhance multi-jurisdictional capabilities was afforded a slightly higher rating.

(ii) *Wellness and Fitness Activities.* In implementing the criteria panel's recommendations, DHS has determined that fire departments must offer periodic health screenings, entry physical examinations, and an immunization program to have an effective wellness/fitness program. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* to receive funding for any other initiatives in this activity. After entry-level physicals, annual physicals, and immunizations, DHS gave high priority to formal fitness and injury prevention programs. DHS gave lower priority to stress management, injury/illness rehabilitation, and employee assistance.

DHS has determined the greatest relative benefit will be realized by supporting new wellness and fitness programs. Therefore, applicants for new wellness/fitness programs were accorded higher competitive ratings when compared with applicants lacking wellness/fitness programs and applicants that already employ a wellness/fitness program. Finally, because participation is critical to achieving any benefits from a wellness or fitness program, applications that mandate or provide incentives for participation were given higher competitive ratings.

(iii) *Equipment Acquisition.* As stated in the AFG authorization statute, the purpose of this grant program is to protect the health and safety of firefighters and the public from fire and fire-related hazards. As such, equipment that has a direct effect on the health and safety of either firefighters or the public received a higher competitive rating than equipment that has no such effect. Equipment that promotes interoperability with neighboring jurisdictions received additional consideration in the cost-benefit assessment if the application made it into the competitive range.

The criteria development panel recommended that this grant program will achieve the greatest benefits if the grant program provides funds to purchase firefighting, including rescue, EMS, and/or CBRNE preparedness, equipment that they have never owned prior to the grant, or to replace used or obsolete equipment. However, for the 2006 program year, departments seeking to expand into new service or mission areas received a lower competitive rating. New services or missions received a lower priority due to the risk that an applicant will not be able to financially support and sustain the new service or mission beyond the period of the grant.

Departments responding to high call volumes were afforded a higher competitive rating than departments responding to lower call volumes in similar communities. In other words, those departments that are required to respond more often received a higher competitive rating then those that respond less frequently.

The purchase of equipment that brings the department into statutory (or OSHA) compliance will provide the highest benefit and therefore received the highest consideration. The purchase of equipment that brings a department into voluntary compliance with national standards also received a high competitive rating, but not as high as for the purchase of equipment that brings a department into statutory compliance. The purchase of equipment that does not affect statutory compliance or voluntary compliance with a national standard received a lower competitive rating.

(iv) *Personal Protective Equipment Acquisition.* One of the stated purposes of this grant program is to protect the health and safety of firefighters and the public. To achieve this goal and maximize the benefit to the firefighting community, DHS believes that it must fund those applicants needing to provide personal protective equipment (PPE) to a high percentage of their personnel. Accordingly, a higher competitive rating in this category was given to fire departments where a larger percentage of active firefighting staff was without compliant PPE. A high competitive rating was given to departments that wish to purchase enough PPE to equip one hundred percent of their active firefighting staff, or one hundred percent of their on-duty staff, as appropriate. Also a high competitive rating was given to departments that will purchase the equipment for the first time as opposed to departments replacing obsolete or substandard equipment (*e.g.*, equipment that does not meet current NFPA and OSHA standards), or purchasing equipment for a new mission. For those departments that are replacing obsolete or substandard equipment, the condition of the equipment to be replaced was factored into the score with a higher priority given to replacing damaged, torn, and/or contaminated equipment.

DHS only considered funding applications for personal alert safety system (PASS) devices that meet current national safety standards, *i.e.*, integrated and/or automatic or automatic-on PASS. Finally, the number of fire response calls that a department makes in a year was considered with the higher priority going to departments with higher call volumes, while applications from departments with low call volumes were afforded lower competitive ratings. The call volume of rural departments was compared only to other rural departments; suburban departments were compared only to other suburban departments; and urban departments

were compared only to other urban departments.

(v) *Modifications to Fire Stations and Facilities.* One statutory purpose of this grant program is to protect the health and safety of firefighters. DHS believes that more benefit is derived from modifying fire stations than by modifying fire-training facilities or other fire-related facilities. Facilities that would be open for broad usage and have a high occupancy capacity received a higher competitive rating than facilities that have limited use and/or low occupancy capacity. The frequency of use would also have a bearing on the benefits to be derived from grant funds. The frequency and duration of a facility's occupancy have a direct relationship to the benefits to be realized from funding in this activity. Modification of facilities that are occupied or otherwise in use 24-hours-per-day/seven-days-a-week received a higher competitive rating than modification of facilities used on a part-time or irregular basis.

(2) Firefighting Vehicle Acquisition Program

Due to the inherent differences between urban, suburban, and rural firefighting conventions, DHS has developed different priorities in the vehicle program for departments that service different types of communities. The following chart delineates the priorities in this program area for each type of community. Due to the competitive nature of this program and the imposed limits of funding available for this program, it is unlikely that DHS will fund many vehicles that are not listed as a Priority One or a Priority Two in the 2006 program year.

VEHICLE PROGRAM PRIORITIES

Priority	Urban communities	Suburban communities	Rural communities
Priority One	Pumper	Pumper	Pumper.
	Aerial	Aerial	Brush/Attack.
	Quint (Aerial < 76')	Quint (Aerial < 76')	Tanker/Tender.
	Quint (Aerial 76' or >)	Quint (Aerial 76' or >)	Quint (Aerial < 76').
	Rescue	Brush/Attack.	
Priority Two	Command	Command	HazMat.
	HazMat	HazMat	Rescue.
	Light/Air	Rescue	Light/Air.
	Rehab	Tanker/Tender	Aerial
			Quint (Aerial 76' or >.
Priority Three	Foam Truck	Foam Truck	Foam Truck.
	ARFFV	ARFFV	ARFFV.
	Brush/Attack	Rehab	Rehab.
	Tanker/Tender	Light/Air	Command.
	Ambulance	Ambulance	Ambulance.
	Fire Boat	Fire Boat	Fire Boat.

Regardless of the type of community served, DHS believes that greater benefit derives from funding fire departments that own few or no vehicles of the type requested than from funding a department with numerous vehicles of that same type. When assessing the number of vehicles a department has within a particular type, all vehicles with similar functions were included. For example, the "pumper" category includes: pumpers, engines, pumper/tankers, (with less than 1,250 gallon capacity), rescue-pumpers, quints (with aerials less than 76 feet in length), and urban interface vehicles (Type I, II or III). Pumpers with water capacity in excess of 1,250 gallons were considered a tanker/tender.

A higher competitive rating in the apparatus category was given to fire departments that own few or no firefighting vehicles relative to other departments serving similar types of communities. A higher competitive rating was given to departments that have an aged fleet of firefighting vehicles. A higher competitive rating was also given to departments that respond to a significant number of incidents relative to other departments.

DHS gave lower priority to funding departments seeking apparatus to expand into new mission or service areas due to the risk that the requesting department will not be able to support and sustain the new mission or service area beyond the grant program.

DHS assigned no competitive advantage to the purchase of standard model commercial vehicles relative to custom vehicles, or the purchase of used vehicles relative to new vehicles in the preliminary evaluation of applications. DHS has noted that, depending on the type and size of department, the technical evaluation panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

Finally, due to the high demand for firefighting apparatus exhibited during prior program years and statutory limitations on the percentage of grant funds that can be used for the purchase of vehicles, DHS allowed each fire department to apply for only one vehicle during the 2006 program year. In addition, any department that had received a vehicle award from any previous AFG program year was not eligible for a second vehicle award in 2006.

(3) Administrative Costs

Panelists assessed the reasonableness of the administrative costs requested in each application and determined if it is reasonable and in the best interest of the program.

Nonaffiliated EMS Organization Priorities

DHS may make grants for the purpose of enhancing the provision of emergency medical services by nonaffiliated EMS organizations. Funding for these organizations is limited to not more than two percent of the appropriated amount. DHS has determined that it is more cost-effective to enhance or expand an existing emergency medical service organization by providing training and/or equipment than it would be to create a new service.

Communities that do not currently offer emergency medical services but are turning to this grant program to initiate such a service received the lowest competitive rating. DHS does not believe creating a nonaffiliated EMS program is a substantial and sufficient benefit under the program.

Specific rating criteria and priorities for each of the grant categories are provided below following the descriptions of this year's eligible programs. The rating criteria, in conjunction with the program description, provide an understanding of the evaluation standards.

(1) EMS Operations and Safety Program

There were five different activities available for funding under this program area: EMS training, EMS equipment, EMS personal protective equipment, wellness and fitness, and modifications to facilities. Requests for equipment and training to prepare for response to incidents involving CBRNE were available under the applicable equipment and training activities.

(i) *Training Activities.* DHS believes that upgrading a service that currently meets a basic life support capacity to a higher level of life support creates the most benefit. Therefore, DHS gave a higher competitive rating to nonaffiliated EMS organizations that seek to upgrade from first responder to EMT–B level. Since training is a pre-requisite to the effective use of EMS equipment, organizations whose request is more focused on training activities received a higher competitive rating than organizations whose request was more focused on equipment. The second priority was to elevate emergency responders' capabilities from EMT–B to EMT–I or higher.

(ii) *EMS equipment acquisition.* As noted above, training received a higher competitive rating than equipment. Applications seeking assistance to purchase equipment to support the EMT–B level of service received a higher priority than requests seeking assistance to purchase equipment to support advance level EMS services. Items that were eligible but a lower priority include tents, shelters, generators, lights, and heating and cooling units.

(iii) *EMS personal protective equipment.* DHS gave the same priorities for EMS PPE as it did for Fire Department PPE discussed above. Acquisition of PASS devices was not funded for EMS programs.

(iv) *Wellness and Fitness Activities.* DHS believes that to have an effective wellness/fitness program, nonaffiliated EMS organizations must offer periodic health screenings, entry physical examinations, and an immunization program similar to the programs for fire departments discussed above. Accordingly, applicants for grants in this category must currently offer or plan to offer with grant funds *all three benefits* (periodic health screenings, entry physical examinations, and an immunization program) to receive funding for any other initiatives in this activity.

(v) *Modification to EMS stations and facilities.* DHS believes that the competitive rankings and priorities applied to modification of fire stations and facilities, discussed above, apply equally to EMS stations and facilities.

(2) EMS Vehicle Acquisition Program

DHS gave the highest funding priority to acquisition of ambulances and transport vehicles due to the inherent benefits to the community and EMS service provider. Due to the costs associated with obtaining and outfitting non-transport rescue vehicles relative to the benefits derived from such vehicles, DHS gave non-transport rescue vehicles a lower competitive rating than transport vehicles. Vehicles that have a very narrow function, such as aircraft, boats, and all-terrain vehicles, received the lowest competitive rating. DHS anticipates that the EMS vehicle awards will be very competitive due to very limited available funding. Accordingly, it is unlikely that DHS will fund any vehicles that are not listed as a "Priority One" in the 2006 program year. The following chart delineates the priorities in this program area for each type of community.

EMS VEHICLE PRIORITIES

Priority One	Priority Two	Priority Three
• Ambulance or transport unit to support EMT–B needs and functions.	• First responder non-transport vehicles ..... • Special operations vehicles.	• Helicopters/planes. • Command vehicles. • Rescue boats (over 13 feet in length). • Hovercraft. • Other special access vehicles.

DHS has not differentiated priorities in this year's EMS vehicle program for different types of communities.

Along with the priorities illustrated above, DHS has accepted the fire service recommendation that emerged from the criteria development process that funding applicants that own few or no vehicles of the type sought will be more beneficial than funding applicants that own numerous vehicles of that same type. DHS assessed the number of vehicles an applicant owns by including all vehicles of the same type. For example, transport vehicles were considered the same as ambulances. DHS gave a higher competitive rating to applicants that have an aged fleet of emergency vehicles, and to applicants with old, high-mileage vehicles. A higher competitive rating was given to applicants that respond to a significant number of incidents relative to applicants responding less often while servicing similar communities.

(3) Administrative Costs

Panelists assessed the reasonableness of the administrative costs requested in each application and determined if it is reasonable and in the best interest of the program.

Dated: August 31, 2006.

George W. Foresman,

Under Secretary for Preparedness.

[FR Doc. E6–14759 Filed 9–5–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1658–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1658–DR), dated August 15, 2006, and related determinations.

DATES: *Effective Date:* August 28, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 15, 2006:

Hudspeth County for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Under Secretary for Federal Emergency Management and Director of FEMA.

[FR Doc. E6–14665 Filed 9–5–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4630–FA–07]

Announcement of Funding Awards; Fair Housing Initiatives Program; Fiscal Year 2001

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of the fiscal year 2001 funding awards made under the Fair Housing Initiatives Program (FHIP). The purpose of this document is to announce the names and addresses of the award winners and the amount of the awards to be used to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Support Division, Office of Programs, 451 Seventh Street, SW., Room 5230, Washington, DC 20410. Telephone number (202) 708–2215 (this is not a toll-free number). A telecommunications device (TTY) for hearing and speech impaired persons is available at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with state and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established the FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent state and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The FHIP has three active funding categories: The Education and Outreach Initiative (EOI), the Private Enforcement Initiative (PEI), and the Fair Housing Organizations Initiative (FHOI). This Notice announces awards made, primarily, under EOI, PEI and FHOI, as well as award(s) under National Programs and other special funding categories.

The Department announced in the **Federal Register** on February 26, 2001 (66 FR 11638 and 66 FR 11793), the availability of approximately $16,500,000, out of an appropriation of $24,000,000, and any potential recapture, to be utilized for the FHIP for projects and activities through PEI, EOI, FHOI with the remaining approximately $7,500,000 designated to the National Housing Discrimination Audit 2001. Additionally, on July 25, 2001 (66 FR 38846) the availability of approximately $1,000,000 for a 24-month period was announced under a separate Notice of Funding Availability (NOFA) under the EOI—National Program—Model Codes Partnership Component (MCPC). Although the MCPC was first published in the **Federal Register** on February 24, 2000, no timely applications were received.

This Notice announces the award of approximately $16,336,127 million of FY 2001 grant funding to 94 organizations that submitted applications under the February 26, 2001 SuperNOFA and the award of six contracts to four organizations for approximately $5,498,754.10 for the National Housing Discrimination Study and other purposes. This Notice further announces the award of approximately $1,874,519.00 of FY 2000 funding to 2 organizations, which included an award to 1 organization under the July 25, 2001, NOFA. Finally, this notice announces the award of approximately $1,999,712 in FY 2001 funding to two National EOI programs plus another $72,000 for partial funding of one FHOI/ENOC program for applications submitted under the March 26, 2002 SuperNOFA.

The Department reviewed, evaluated and scored the applications received based on the criteria in the February 26, 2001 SuperNOFA and the July 25, 2001 NOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Dated: August 10, 2006.

Bryan Greene,

Deputy Assistant Secretary for Enforcement and Programs.

APPENDIX A—FY 2001 FAIR HOUSING INITIATIVES PROGRAM AWARDS

Applicant name	Contact person	Region	Award amount
Education and Outreach Initiative/General Component			
City of Cambridge Human Rights Commission, 51 Inman Street, 2nd Floor, Cambridge, MA 02139.	Quo Tran, 617–349–4396	1	$95,987.00
City of Boston Fair Housing, One City Hall Plaza, Room 966, Boston, MA 02201.	Victoria Williams, 817–635–2525	1	93,133.00
Westchester Residential Opportunities, 470 Mamaroneck Avenue, Suite 410, White Plains, NY 10605.	Toni Downes, 914–428–4507 x306	2	99,965.00
Neighborhood Economic Development, Avocacy Project, 299 Broadway, Suite 706, New York, NY 10007.	Sarah Ludwig, 212–393–9595	2	100,000.00
Citizen Action of New Jersey, 400 Main Street, Hackensack, NJ 07601	Phyllis Salowe-Keye, 201–488–2804	2	100,000.00
Housing Council in the Monroe County Area, Inc., 183 East Main Street, Suite 1100, Rochester, NY 14604.	Anne Peterson, 716–546–3700 x3008.	2	98,560.00
Fair Housing Council of Central New York, Inc., 327 W. Fayette Street, Suite 408, Syracuse, NY 13202.	Merrilee Witherell, 315–471–0420	2	96,602.00
Asian Americans for Elderly Comm. Development Fund, 111 Division Street, New York, NY 10002.	Sui Kwan Chan, 212–964–2288	2	100,000.00
City of New York, Department of Housing Preservation, 100 Gold Street, New York, NY 10038.	Jerilyn Perine, 212–863–6100	2	95,632.00
Delaware Comm Reinvestment Action Council, Inc., 601 North Church Street, Wilmington, DE 19301.	Rashmi Rangan, 302–654–5024	3	75,000.00
Prince William County, Virginia, 8033 Ashton Avenue, Suite 105, Manassas, VA 20109.	Joseph Botta, 703–792–4799	3	13,500.00
Delaware Housing Coalition, P.O. Box 1633, Dover, DE 19903	Ken Smith, 302–678–2286	3	50,625.00
Tenant Support Services, Inc., 642 North Broad Street, Philadelphia, PA 19130.	Asia Coney, 215–684–1016	3	100,000.00
D.C. Department of Housing and Community Development, 801 North Capitol Street, NE., Washington, DC 20002.	Milton Bailey, 202–442–7210	3	100,000.00
United Neighborhood Centers of Lackawana County, Inc., 410 Olive Street, Scranton, PA 18509.	Michael Henley, 570–346—759	3	53,137.00
City of Memphis, 701 North Main Street, Memphis, TN 38107	W.W. Herenton, 901–357–6008	4	100,000.00
Broward County Commission, 201 South Andrews Avenue, 2nd Floor, Fort Lauderdale, FL 33301.	Roger Desjarlis, 954–357–7350	4	100,000.00
Kentucky Commission on Human Rights, 323 W. Broadway, Louisville, KY 40202.	Beverly Watts, 502–595–4024	4	99,833.00
The Fair Housing Agency of Alabama, Inc., 1111 Beltine Highway, Suite 109, Mobile, AL 36606.	Enrique Lang, 334–471–9333	4	97,956.00
South Mississippi Legal Services, Inc., P.O. Box 1386, Biloxi, MS 39533	Stanley Taylor, 228–374–4160	4	100,000.00
Albany State University, 419 West Oglethorpe Blvd., Albany, GA 31701	Everett Cordy, 229–430–1367	4	100,000.00
Metropolitan Development and Housing Agency, 701 South Sixth Street, Nashville, TN 37206.	Gerald Nicely, 615–780–7085	4	89,790.00
City of Flint Human Relations, 1101 South Saginaw Street, Flint, MI 48502	Woodrow Stanley, 810–766–7346	5	100,000.00
Homeownership Network Services, 550 East Spring Street, Columbus, OH 43236.	Mona Simons, 614–287–3978	5	99,871.00
Carver County Housing and Redevelopment Agency, 705 Walnut Street, Chaska, MN 55318.	Julie Frick, 952–448–7715	5	10,000.00
Toledo Fair Housing Center, 2116 Madison Ave., Toledo, OH 43624	Lisa Rice, 419–243–6163	5	100,000.00
SER/Jobs for Progress, Inc., 117 North Genesee Street, Wawketan, IL 60085.	Dawn Erickson, 847–336–3247	5	96,928.00
Coalition on Homelessness and Housing in Ohio, 35 East Gay Street, Suite 210, Columbus, OH 43215.	Bill Faith, 614–280–1984	5	100,000.00
ACORN Housing Corporation, 757 Raymond Avenue, St. Paul, MN 55114	George Butts, 651–203–0008	5	100,000.00
Wayne State University, 656 W. Kirby Rm. 4002, Detroit, MI 48202	Karen Watkins-Hollwell, 313–577–2294.	5	100,000.00
United Migrant Opportunity Services, Inc., 929 W. Mitchell Street, Milwaukee, WI 53204.	Lupe Martinez, 414–389–6000	5	100,000.00
St. Clair County, 19 Public Square, Suite 200, Belleville, IL 62220	Thelma Chalmers, 618–277–6790	5	85,071.00
Columbus Urban League, 788 Mount Vernon Avenue, Columbus, OH 42302.	Samuel Gresham, 614–257–6300	5	100,000.00
Arkansas Community Housing Corporation, 2101 South Main Street, Little Rock, AR 72206.	Gloria Smith, 501–661–0514	6	100,000.00
Desire Community Housing Corp., 2709 Piety Street, New Orleans, LA 70126.	Wilbert Thomas, 504–945–6731	6	100,000.00
Ft. Worth Human Relations Commission, 1000 Throckmorton, Fort Worth, TX 76102.	Vanessa Boiling, 817–871–7534	6	99,362.00
City of Santa Fe, P.O. Box 909, Santa Fe, NM 87504	Larry Delgado, 505–955–6562	6	98,895.00
Gulf Coast Community Services Association, 5000 Gulf Freeway, Bldg. #1, Houston, TX 77023.	Fran Holcomb, 713–393–4700	6	100,000.00
Crawford-Sebastian Community Development Council, 4831 Armour Street, Fort Smith, AR 72914.	Weldon Ramey, 501–785–2303	6	10,766.00
City of Garland, P.O. Box 46902, Garland, TX 75046–9002	Jim Slaughter, 972–205–3313	6	100,000.00
Urban League of Wichita, Inc., P.O. Box 46902, Witchita, KS 67214	Otis Milton, 316–262–2463	7	100,000.00

APPENDIX A—FY 2001 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name	Contact person	Region	Award amount
Iowa Civil Rights Commision, 211 East Maple, 2nd Floor, Des Moines, IA 50309.	Corlis Moody, 515–281–8084	7	95,563.00
Southeast Missouri Regional Community Development Corporation, Route D, River Road, Lilbourn, MO 63862.	Darvin Green, 373–688–2480	7	100,000.00
Colorado Coalition for the Homeless, 2111 Champa, Denver, CO 80205	John Parvensky, 303–293–2217	8	100,000.00
Legal Services of Northern California, 517 12th Street, Sacramento, CA 95814.	Gary Smith, 916–447–4700	9	100,000.00
EDUCATION AND OUTREACH INITIATIVE/DISABILITY COMPONENT			
Tennessee Fair Housing Council, 719 Thompson Lane, Suite 200, Nashville, TN 37204.	Tracey McCartney, 615–383–6155	4	99,179.00
Kentucky Fair Housing Council, Inc., 835 W. Jefferson St., Suite 100, Louisville, KY 40202.	Galen Martin, 502–583–3247	4	95,956.00
Access Living of Metropolitan Chicago, 614 West Roosevelt Road, Chicago, IL 60607.	Rosa Villarreal, 312–253–7000	5	100,000.00
Protection and Advocacy System, 1720 Louisiana Blvd., NE Suite 204, Albuquerque, NM 87110.	James Jackson, 505–256–3100	6	99,250.00
Living Independently in NW Kansas, 2401 E 13th, Hays, KS 67601	Brian Atwell, 785–625–6942	7	99,465.00
NAPA County Rental Information & Mediation Service, 1714 Jefferson Street, Napa, CA 94559.	Jean Barstow, 707–253–2700	9	10,000.00
Silver State Fair Housing Council (formerly Truckee Meadows), P.O. Box 3935, Reno, NV 89505–3935.	Katherine Copeland, 775–324–0990	9	100,000.00
Idaho Legal Aid Services, Inc., 310 N 5th Street, Boise, ID 83702	Ernesto Sanchez, 208–336–8980x105.	10	100,000.00
Arc of Cowiltz Valley, 1410 8th Avenue, Room 15, Longview, WA 98632	Frank Schubert, 360–425–5494	10	35,625.00
Fair Housing Organizations Initiative			
National Fair Housing Alliance, 1212 New York Ave., #525, Washington, DC 20005.	Shanna Smith, 202–898–1661	3	1,049,999.00
Housing Opportunities for Project Excellence, Inc., 18441 NW 2nd Ave., Suite 218, Miami, FL 33169.	William Thompson, 305–651–4673	4	1,050,000.00
West Tennessee Legal Services, Inc., 210 W. Main Street, Jackson, TN 38302.	J. Steven Xanthopulos, 731–423–0616.	4	1,050,000.00
Fair Housing Contact Service, 333 S. Main Street, Suite 300, Akron, OH 44308.	Lynn Clark, 330–376–4331	5	204,981.00
Fair Housing Resource Center of Washtenaw County, P.O. Box 7825, Ann Arbor, MI 48107.	Pamela Kisch, 734–994–3426	5	449,814.000
Private Enforcemnt Initiative			
Housing Discrimination Project, Inc., 57 Suffolk Street, Holyoke MA 01040	Erin Kemple, 413–539–9796	1	250,000.00
Connecticut Fair Housing Center, 221 Main Street, Suite 204, Hartford, CT 06106.	Nancy Downing, 860–247–4400	1	200,028.00
Brooklyn Legal Services Group, 105 Court Street, Brooklyn, NY 11201	John Gray, 718–237–5524	2	250,000.00
Long Island Housing Services, Inc., 3900 Veteran's Memorial Highway, Suite 2, Bohemia, NY 11716.	Michelle Santantonio, 631–467–5111	2	240,000.00
Open Housing Center, Inc., 45 John Street, Suite 308, New York, NY 10038.	Karen Webber, 212–231–7080 ext. 14.	2	250,000.00
Fair Housing Council of Northern New Jersey, 131 Main Street, Hackensack, NJ 07601.	Lee Porter, 201–489–3552	2	250,000.00
Tenant's Action Group of Philadelphia (TAG), 21 S. 12th Street, 12th Floor, Philadelphia, PA 19107.	John Rowel, 215–575–0707	3	250,000.00
Fair Housing Partnership of Greater Pittsburgh, Inc., 7 Wood Street, Suite #602, Pittsburgh, PA 15222.	Robert Pitts, 412–391–2535	3	250,000.00
Baltimore Neighborhoods, Inc., 2217 St. Paul Street, Baltimore, MD 21218	Joseph Coffey, 410–243–4458	3	139,850.00
Housing Opportunities of Northern Delaware, 100 W 10th Street, Suite 1004, Wilmington, DE 19801.	Gladys Spikes, 302–429–0794	3	63,500.00
Fair Housing Council of Suburban Philadelphia, Inc., 225 S. Chester Rd. Suite 1, Swarthmore, PA 19081.	James Berry, 610–604–4411	3	159,870.00
National Community Reinvestment Coalition, 733 15th Street, NW, Suite 540, Washington, DC 20005.	John Taylor, 202–628–8866	3	250,000.00
Jacksonville Area Legal Aid, Inc., 126 W. Adams Street, Jacksonville, FL 32202.	Michael Figgins, 904–356–8371	4	248,719.00
Memphis Area Legal Services, Inc., 109 North Main Street, Jackson TN 38302.	Harrison McIver, 901–426–4311	4	250,000.00
Metro Fair Housing Services, Inc., P.O. Box 91125, Atlanta, GA 30364–1125.	Foster Corbin, 404–765–3985	4	200,115.00
West Tennessee Legal Services, Inc., 210 W. Main Street, Jackson, TN 38302.	J. Steven Xanthopoulos, 901–426–4131.	4	250,000.00
Fair Housing Center of Greater Palm Beaches, Inc., 1300 W. Lantana Rd. Ste, 200, Lantana, FL 33462.	Vince Larkins, 561–533–8717	4	200,000.00

APPENDIX A—FY 2001 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name	Contact person	Region	Award amount
Legal Aid Society of Minneapolis, 430 First Avenue North, Suite 300, Minneapolis, MN 55401.	Jeremy Lane, 612–334–5785	5	250,000.00
Fair Housing Center of Metropolitan Detroit, 1249 Washington Blvd., Room 1312, Detroit, MI 48226.	Clifford Schrupp, 313–963–1274	5	249,683.00
Fair Housing Resources Center, Inc., 54 South State Street, Painesville, OH 44077.	Patricia Kidd, 440–392–0147	5	185,199.00
Hope Fair Housing Center, 2100 Manchester Rd., Suite 1070, Bldg. 8, Wheaton, IL 60187.	Bernard Klein, 630–690–6500	5	250,000.00
Metropolitan Milwaukee Fair Housing Council, 600 East Mason Street, Suite 401, Milwaukee, WI 53202.	William Tisdale, 414–278–1240	5	250,000.00
Leadership Council of Metropolitan Chicago, 111 West Jackson Blvd., 12th Floor, Chicago, IL 60604.	Aurie Pennick, 312–341–5678	5	250,000.00
Cuyahoga Plan of Ohio, Inc., 812 Huron Road, Suite 620, Cleveland, OH 44115.	Michael Roche, 216–621–4525	5	249,992.00
Chicago Lawyer's Committee for Civil Rights Under Law, 100 N LaSalle Street, Ste. 600, Chicago, IL 60602.	Clyde Murphy, 312–630–9744	5	235,944.00
Austin Tenants Council, 1619 E. Cesar Chavez Street, Austin, TX 78702	Katherine Stark, 512–474–7007	6	183,066.00
Greater Houston Fair Housing Center, 2900 Woodridge, #303, Houston, TX 77087.	Daniel Busamante, 713–641–3247	6	248,824.00
Metropolitan St. Louis Equal Housing Opportunity Council, 1027 S. Vandeventer Ave., 4th Floor, St. Louis, MO 63110.	Bronwen Zwimer, 314–534–5800	7	249,990.00
Regional Executive Council on Civil Rights, P.O. Box 736, Salina, KS 67402–0736.	Kaye Crawford, 785–309–5745	7	94,019.00
Kansas City Fair Housing Center, 3033 Prospect, Kansas City, MO 64128	Ruth Shechter, 816–923–3247	7	226,854.00
Metro Denver Fair Housing Center, 2855 Trangont Pl., Suite 205, Denver, CO 80205.	Donna Hilton, 303–296–6949	8	235,114.00
Southern Arizona Fair Housing Center, 2030 E. Broadway Blvd., Suite 101, Tucson, AZ 85719.	Richard Rhey, 520–798–1568	8	249,800.00
Orange County Fair Housing Council, 201 S. Broadway, Santa Ana, CA 92701.	D. Elizabeth Pierson, 714–569–0823	9	125,115.00
Bay Area Legal Aid, 405 14th Street, 9th Floor, Oakland, CA 94612	Ramon Arias, 510–663–4755	9	250,000.00
Fair Housing of Marin, 615 B Street, San Rafael, CA 94901	Steve Saxe, 415–461–4080	9	250,000.00
Secretary Initiated Projects/Contracts Housing Discrimination Study (HDS)—Contracts			
Housing Discrimination Study/The Urban Institute, 2100 M Street, N.W., Washington, DC.	Margery Turner, 435–797–1529	3	999,333.00
Housing Discrimination Study/The Urban Institute, 2100 M Street, N.W., Washington, DC.	Margery Turner, 435–797–1529	3	250,423.00
Housing Discrimination Study/The Urban Institute, 2100 M Street, N.W., Washington, DC.	Margery Turner, 435–797–1529	3	1,592,813.00
National Fair Housing Alliance, 1212 New York Ave., NW #525, Washington, DC 20005.	Shanna Smith, 202–898–1661	3	649,309.00
Progressive Management Resources, Inc., 1580 Wilshere Blvd., Suite 2020, Los Angles, CA 90010.	Heidi Jane Olguin	3	322,810.00
Project for Training and Technical Assistance Guidance—(1 Contract)			
KPMG Consulting, 1676 International Dr., McClean, VA 22102–4828	Wendy F. Carr, 703–747–4230	3	1,684,066.00
FY 2001 Fair Housing Initiatives Program Awards Out of FY 2000 Funding Education and Outreach Initiative National-Model Codes Partnership Component			
International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.	Richard Kuchnicki, (202) 466–3434	3	891,443.00
Secretary Initiated Project for Training and Technical Assistance Guidance			
KPMG Consulting, 1676 International Dr., McClean VA, 22102–4828	Wendy F. Carr, 703–747–4230	3	983,076.00
FY 2002 Fair Housing Initiatives Program Award Out of FY 2001 Funding Fair Housing Organizations Initiative			
National Fair Housing Alliance, 1212 New York Ave., NW #525, Washington, DC 20005.	Shanna Smith, 202–898–1661	3	72,000.00
National Education and Outreach Initiative-Media Campaign Component			
Leadership Conference Education Fund, 1629 K Street, Suite 1010, Washington, DC 20006.	Karen Lawson, (202) 466–3434	3	1,000,000.00

APPENDIX A—FY 2001 FAIR HOUSING INITIATIVES PROGRAM AWARDS—Continued

Applicant name	Contact person	Region	Award amount
National Education and Outreach Initiative—Fair Housing Awareness Component			
National Fair Housing Alliance, 1212 New York Ave., NW #525, Washington, DC 20005.	Shanna Smith, 202–898–1661	3	999,712.00

[FR Doc. E6–14663 Filed 9–5–06; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–16]

Announcement of Funding Awards; Fair Housing Initiatives Program; Fiscal Year 2002

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department for funding under the SuperNotice of Funding Availability (SuperNOFA) for the Fair Housing Initiatives Program (FHIP) for Fiscal Year (FY) 2002. This announcement contains the names and addresses of those award recipients selected for funding based on the rating and ranking of all applications and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Myron Newry, Director, FHIP Support Division, Office of Programs, Room 5230, 451 Seventh Street, SW., Room 5230, Washington, DC 20410. Telephone number (202) 708–2215, extension 7095 (this is not a toll-free number). A telecommunications device (TTY) for hearing or speech-impaired persons is available at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (the Fair Housing Act) charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616, established FHIP to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The Department announced in the **Federal Register** on March 26, 2002 (67 FR 13826 and 67 FR 14003), the availability of approximately $20,250,000, and any potential recapture, to be utilized for the Fair Housing Initiatives Program for projects and activities through the Private Enforcement Initiative (PEI), the Education and Outreach Initiative (EOI), and the Fair Housing Organizations Initiative (FHOI). This Notice announces the award of approximately $18,249,887.87 of FY 2002 funds in grants to 97 organizations and $1,994,458.00 in 4 contracts to 2 organizations.

The Department reviewed, evaluated and scored the applications received based on the criteria in the FY 2002 SuperNOFA. As a result, HUD has funded the applications announced in Appendix A, and in accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing details concerning the recipients of funding awards in Appendix A of this document.

The Catalog of Federal Domestic Assistance Number for currently funded Initiatives under the Fair Housing Initiatives Program is 14.408.

Date: August 10, 2006.

Bryan Greene,

Deputy Assistant Secretary for Enforcement and Programs.

APPENDIX A—FAIR HOUSING INITIATIVES PROGRAM AWARDS FY 2002

Organization	Contact person	Region	Amount awarded
Education and Outreach Initiative/ General Component			
Pine Tree Legal Assistance, Inc., P.O. Box 547, 88 Federal Street, Portland, ME 04112.	Nan Heald, (207) 774–4753	1	$100,000.00
Rhode Island Legal Services, Inc., 56 Pine Street, 4th Floor, Providence, RI 02903.	Robert Barge, (401) 274–2652 ext.121.	1	100,000.00
Citizens Action of NJ, 400 Main Street, Hackensack, NJ 07601	Phyllis Salowe-Keye (201) 488–2804.	2	88,378.62
Housing Council in the Monroe County Area, Inc., 183 East Main Street, Ste. 1100, Rochester, NY 14202.	Bret Garwood, (585) 546–3700 ext. 300.	2	99,728.00
Neighborhood Economic Development Advocacy, 73 Spring Street, Ste. 506, New York, 10012.	Sarah Ludwig, (212) 680–5100 ..	2	100,000.00
Acorn Fair Housing, 739 8th Street, SE., Washington, DC 20003 ...	Carolyn Carr, (202) 547–2500	3	100,000.00
Delaware Community Reinvestment Action Council, 601 N. Church Street, Wilmington, DE 19801–4420.	Rashmi Ragan, (302) 654–5024	3	64,000.00
Fair Housing Council of Montgomery County, 105 E. East Glenside Avenue, Glenside, PA 19038.	Elizabeth Albert, (215) 576–7711	3	100,000.00

APPENDIX A—FAIR HOUSING INITIATIVES PROGRAM AWARDS FY 2002—Continued

Organization	Contact person	Region	Amount awarded
Piedmont Housing Alliance, 2000 Holiday Drive, Ste. 200, Charlottesville, VA 22901.	Karen Klick, (434) 817–2436 ext. 106.	3	66,655.00
Fair Housing Agency of Alabama, 1111 Beltline Highway, Ste. 109, Mobile, AL 366068.	Enrique Lang, (251) 471–9333 ...	4	98,106.00
Greenville County Human Relations Commission, 301 University Ridge, Ste. 1600, Greenville, SC 2901–3660.	Sharon Smathers, (864) 467–7095.	4	85,936.00
JC Vision and Associates, Inc., P.O. Box 1972, 135C East MLK, Jr. Drive, Hinesville, GA 31313.	Dana Ingram, (912) 877–4243	4	99,993.00
Legal Aid Society of Palm Beach County, Inc., 423 Fern Street, Ste. 200, West Palm Beach, FL 33401.	Robert Bertisch, (561) 655–8944 ext. 247.	4	100,000.00
Kentucky Fair Housing Council, 835 W Jefferson Street, #100, Louisville, KY 40202.	Galen Martin, (502) 583–3247	4	99,937.00
South Mississippi Legal Services Corporation, P.O. Box 1386, Biloxi, MS 39533.	Stanley Taylor, Jr., (228) 374–4160 ext. 23.	4	100,000.00
Metropolitan Development and Housing Agency, 701 South Sixth Street, Nashville, TN 37026.	Connie Davenport, (615) 780–7085.	4	98,638.29
Acorn Housing Corporation, 757 Raymond Avenue, #200, St. Paul, MN 55114.	Jordon Ash, (651) 203–0008	5	100,000.00
Coalition on Homelessness and Housing in Ohio, 35 East Gay Street, Ste. 210, Columbus, OH 43215.	Bill Faith, (614) 280–1984	5	100,000.00
Detroit Alliance For Fair Banking, 8445 East Jefferson Avenue, Detroit, MI 48214.	Veronica Williams, (313) 824–0950.	5	100,000.00
Jane Adams Hull House Association, 10 South Riverside, Ste. 1700, Chicago, IL 60606.	Jennifer Michael, (312) 906–8600 ext. 227.	5	100,000.00
Leadership Council for Metropolitan Open Communities, 111 W. Jackson Blvd., 12th Floor, Chicago, IL 60604.	John Lukehart, (312) 341–5678 ..	5	100,000.00
Metropolitan Interfaith Council on Affordable Housing, 122 West Franklin Avenue, Ste. 310, Minneapolis, MN 55404.	Joy Sorensen-Navarre, (612) 871–8980.	5	99,998.00
Prairie State Legal Service, Inc., 975 North Main Street, Rockford, IL 61103.	Gail Walsh, (815) 965–2134	5	99,820.00
United Migrant Opportunity Services, Inc., 929 West Mitchell Street, Milwaukee, WI 53204.	John Bauknecht, (608) 249–1180	5	99,999.00
Acorn Community Land Association of LA, 1024 Elysian Fields Avenue, New Orleans, LA 70117.	Marianna Butler, (504) 943–0044 ext. 116.	6	100,000.00
City of Garland, 210 Carver Street, Ste. 102A, Garland, TX 75040	Jim Slaughter, (972) 205–3313 ..	6	100,000.00
City of Sante Fe, P.O. Box 909, 120 S. Federal Place, Sante Fe, NM 87504.	Larry A. Delgado, (505) 955–6567.	6	98,889.95
Consumer Credit Counseling Service of Greater Dallas, 8737 King George Drive, Ste.200, Dallas, TX 75235.	Chris Dugan, (214) 638–2227	6	99,883.01
Housing Partners of Tulsa, Inc., P.O. Box 6369, Tulsa, OK 74148	Roy E. Hancock, (918) 581–5709	6	60,921.00
Urban League of Wichita, Inc., 1802 East 13th Street, North, Wichita, KS 67214.	Prentice Lewis, (316) 262–2463	7	100,000.00
Colorado Coalition for the Homeless, 2111 Champa, Denver, C0 80205.	Tracy Eilers, (303) 285–5222	8	100,000.00
Arizona Fair Housing Center, 615 North 5th Avenue, Phoenix, AZ 85003.	Edward Valenzuela, (602) 548–1599.	9	99,962.00
Inland Fair Housing and Mediation Board, 1005 Begonia Avenue, Ontario, CA 91762.	Betty Davidow, (909) 984–2254	9	88,903.00
Legal Aid Society of Hawaii, 924 Bethel Street, Honolulu, HI 96813	Brian Ezuka, (808) 527–8020	9	100,000.00
Idaho Legal Aid Services, Inc., 310 N. 5th Street, Boise, ID 83702	Kelly Miller, (208) 336–8980 x109.	10	100,000.00
International District Housing Alliance, 606 Maynard Ave., S., Ste. 105, Seattle, WA 98104.	Stella Chow, (206) 623–5132 x15	10	99,560.00
Legal Aid Services of Oregon, 700 SW. Taylor Street, Ste. 310, Portland, OR 97205.	Thomas Matsuda, (503) 471–0147.	10	99,908.00
Education and Outreach Initiative/Disability Component			
Bronx Independent Living Services, Inc., 3525 Decatur Avenue, Brooklyn, NY 10467.	Barbara Linn, (718) 515–2800	2	100,000.00
Endependence Center, Inc., 6320 North Center Drive, Norfolk, VA 23502.	Richard Dipeppe, (757) 461–8007.	3	100,000.00
Three Rivers Center for Independent Living (TRICIL) Services, Inc., 900 Rebecca Avenue, Wilkinsburg, PA 15221.	Stanley Holbrook, (412) 371–7700.	3	40,218.00
Mid-Florida Partnership, Inc., 330 North Street, Daytona Beach, FL 32114.	Francine Gordon, (386) 252–7200.	4	100,000.00
Progress Center for Independent Living, 7521 Madison Street, Rockford, IL 60130.	Diane Coleman, (708) 209–1500	5	100,000.00
Statewide Independent Living Council For Homeownership, 122 South Fourth Street, Springfield, IL 62701.	John Eckert, (217) 744–7777	5	47,931.00
Advocacy Center, 225 Baronne Street, Ste. 2112, New Orleans, LA 70112.	Lois Simpson, (504) 522–2337 ...	6	98,425.00

APPENDIX A—FAIR HOUSING INITIATIVES PROGRAM AWARDS FY 2002—Continued

Organization	Contact person	Region	Amount awarded
Iowa Civil Rights Commission, 211 East Maple, Des Moines, IA 50309.	Dawn Peterson, (515) 281–8086	7	98,543.00
AIDS Legal Referral Panel, 1663 Mission Street, Ste. 500, San Francisco, CA 94103.	Bill Hirsh, (415) 701–1200 ext. 308.	9	69,883.00
Mental Health Advocacy Services, Inc., 1336 Wilshire Blvd., Ste. 102, Los Angeles, CA 90017.	James Pries, (213) 484–1628 ext. 13.	9	70,000.00
Private Enforcement Initiatives Component			
Connecticut Fair Housing Center, 221 Main Street, Ste. 204, Hartford, CT 06106.	Erin Kemple, (860) 247–4400	1	254,558.00
New Hampshire Legal Assistance, 1361 Elm Street, Ste. 307, Manchester, NH 03101.	Christine Wellington, (603) 206–2214.	1	258,000.00
Champlin Valley O.E.O., Inc., P.O. Box 1603, 191 North Street, Burlington, VT 05402.	Robert Meehan, (802) 651–0551	1	245,427.00
Fair Housing Center of Greater Boston, 59 Temple Place, Ste. 1105, Boston, MA 02111.	David Harris, (617) 399–0491	1	274,995.00
South Brooklyn Legal Services Corporation, 105 Court Street, Brooklyn, NY 11201.	Josh Zinner, (718) 237–5519	2	275,000.00
Fair Housing Council of CNY, Inc., 327 West Fayette Street, Ste. 408, Syracuse, NY 13202.	Merrilee Witherel, (315) 471–0420.	2	271,895.00
Fair Housing Council of Northern New Jersey, 131 Main Street, Hackensack, NJ 07601.	Lee Porter, (201) 489–3552	2	275,000.00
Housing Opportunities Made Equal, Inc., 700 Mail Street, 3rd Floor, Buffalo, NY 14202.	Scott Gehl, (716) 854–1400	2	247,000.00
Monroe County Legal Assistance Corporation, 80 St. Paul Street, Ste. 700, Rochester, NY 14604.	Laurie Lambrix, (585) 325–2520	2	274,944.00
Fair Housing Council of Suburban Philadelphia, 225 S. Chester Road, Swarthmore, PA 19801.	James Berry, (610) 604–4411	3	205,548.24
Equal Rights Center, Inc., 11 Dupont Circle, NW., 4th Floor, Washington, DC 20036.	Veralee Liban, (202) 234–3062 ..	3	275,000.00
Fair Housing Partnership of Greater Pittsburgh, Inc., 7 Wood Street, Ste. 602, Pittsburgh, PA 15222.	Steven Pakin, (412) 391–2535 ...	3	274,997.00
Central Alabama Fair Housing Center, 207 Montgomery Street, Ste. 725, Montgomery, AL 36104.	Faith Cooper, (334) 263–4663	4	274,000.00
Lexington Fair Housing Council, Inc., 205 East Reynolds Road, Ste. E, Lexington, KY 40517.	Teresa Isaac, (859) 971–8067	4	233,721.65
Fair Housing Continuum, Inc., 840 N. Cocoa Blvd., Ste. F, Cocoa, FL 32922.	David Baade, (321) 633–4551	4	274,998.00
Fair Housing Center of Northern Alabama, 1728 3rd Avenue, Ste. 218, Birmingham, AL 35203.	Lila Hackett, (205) 324–0111	4	275,000.00
Housing Opportunities Project for Excellence, Inc., 18441 NW. 2nd Avenue, Ste. 218, Miami, FL 33169.	William Thompson, (305) 651–4673.	4	275,000.00
Savannah-Chatham County Fair Housing Council, Inc., 7 East Congress Street, Ste. 402, Savannah, GA 31401.	David Dawson, Jr., (912) 651–3136.	4	96,288.00
Mobile Fair Housing Center, Inc., P.O. Box 161202, 600 Bel-Air Blvd., Mobile, AL 36616.	Teresa Fox-Bettis, (251) 479–1532.	4	175,609.00
Jacksonville Area Legal Aid, Inc., 126 West Adams, Jackson, MS 32203–3848.	Michael Figgins, (904) 356–8371	4	274,960.11
West Tennessee Legal Services, Inc., 210 West Main Street, Jackson, TN 38301.	Steven Xanthopoulos, (731) 426–1311.	4	275,000.00
Fair Housing Center of the Greater Palm Beaches, Inc., 1300 W. Lantana Road, Ste. 200, Lantana, FL 33464.	Vince Larkins, (561) 533–8717 ...	4	200,000.00
Access Living of Metropolitan Chicago, 614 W. Roosevelt Street, Chicago, IL 60607.	Marcia Bristo, (312) 253–7000 ...	5	275,000.00
Chicago Lawyers Committee for Civil Rights Under Law, 100 N. LaSalle Street, Ste. 750, Chicago, IL 60602.	Sharon Legenza, (312) 630–9744.	5	242,339.00
The John Marshall Law School, 315 South Plymouth Street, Ste. 1211, Chicago, IL 60604.	Michael Seng, (312) 987–1446 ...	5	273,868.00
Metropolitan Milwaukee Fair Housing Council, Inc., 600 East Mason Street, Ste. 200, Milwaukee, WI 63202.	William Tisdale, (414) 278–1240	5	275,000.00
Hope Fair Housing Center, Building B, Ste. 1070, 2100 Manchester Street, Wheaton, IL 60187.	Bernard Kleina, (630) 690–6500	5	275,000.00
Toledo Fair Housing Center, 1000 Monroe Street, Ste. 4, Toledo, OH 43624.	Lisa Rice, (419) 243-6163	5	275,000.00
South Suburban Housing Center, 18220 Harwood Avenue, Ste. 1, Homewood, IL 60430.	John Petrusack, (708) 957–4674	5	225,000.00
Southern Minnesota Regional, Legal Services, Inc., 700 Minnesota Building, 46 E. 4th Street, St. Paul, MN 55101.	Michael Hagedorn, (651) 228–9823.	5	184,358.00
Legal Aid Society of Albuquerque, Inc., 500 Cooper Avenue NW., Ste. 300, Albuquerque, NM 87102.	John Arango, (505) 243–7871	6	275,000.00

APPENDIX A—FAIR HOUSING INITIATIVES PROGRAM AWARDS FY 2002—Continued

Organization	Contact person	Region	Amount awarded
The Austin Tenant's Council, 1619 Cesar Chavez Street, Austin, TX 78702.	Katherine Stark, (512) 474–7007	6	258,971.00
Greater New Orleans Fair Housing Action Center, Inc., 938 Lafayette Street, Ste. 413, New Orleans, LA 70113.	Jeffrey P. May, (504) 596–2100	6	274,999.00
Metropolitan St. Louis Equal Housing Opportunity, 1027 S. Vandeventer Avenue, 4th Floor, St. Louis, MO 63110.	Bronwen Zwirner, (314) 534–5800.	7	273,321.00
Family Housing Advisory Services, Inc., 2416 Lake Street, Omaha, NE 68111.	Kelvin, S. Blitz-Danler, (402) 934–6675.	7	254,457.00
Wyoming Fair Housing Council, 305 West First Street, Casper, WY 82601.	Linda Harris, (307) 260–6362	8	198,185.00
Montana Fair Housing, Inc., 904 A Kensington Avenue, Missoula, MT 59801.	Robert Liston, (406) 542–2611 ...	8	259,481.00
North Dakota Fair Housing Council, 533 Airport Road, Ste. C, Bismarck, ND 58504.	Amy Nelson, (701) 221–2530	8	273,810.00
Bay Area Legal Aid, 405 14th Street, 9th Floor, Oakland, CA 94612.	Ramon Arias, (510) 663–4755	9	275,000.00
California Rural Legal Assistance, Inc., 631 Howard Street, Suite 300, San Francisco, CA 94105.	Ilene Jacobs, (530) 742–7235 x308.	9	275,000.00
Fair Housing of Marin, Inc., 615 B Street, San Rafael, CA 94901 ...	Nancy Kenyon, (415) 547–5025	9	275,000.00
Silver State Fair Housing Council, P.O. Box 3935, 654 Tahoe Street, Reno, NV 89505–3935.	Katherine Copeland, (775) 324–0990.	9	265,014.00
Orange County Fair Housing Council, 201 S Broadway, Santa Ana, CA 92701–5633.	David Levy, (714) 569–0823 x204.	9	129,600.00
Southern Arizona Fair Housing Center, 2030 E Broadway, Ste. 101, Tucson, AZ 85719.	Richard Rhey, (520) 798–1568 ...	9	274,960.00
Fair Housing Center of South Puget Sound, 950 Pacific Avenue, Ste. 700, Tacoma, WA 98402.	Lauren Walker, (253) 274–9523	10	275,000.00
Fair Housing Council of Oregon, 1020 SW Taylor Street, Ste. 700, Portland, OR 97205.	Pegge Michal, (503) 223–3542 ...	10	274,464.00
Intermountain Fair Housing Council, 310 N 5th Street, Boise, ID 83702.	Richard Mabbutt, (208) 383–0695.	10	274,989.00
Northwest Fair Housing Alliance, 35 West Main Avenue, Ste. 250, Spokane, WA 99201.	Florence Brassier, (509) 325–2665.	10	275,000.00
Fair Housing Organizations Initiative/Establishing New Organizations Component			
National Community Reinvestment Coalition, 733 15th Street NW., Ste. 540, Washington, DC 20005.	John Taylor, (202) 628–8866	3	977,622.00
Jacksonville Area Legal Aid Inc., 126 West Adams Street, Jacksonville, FL 32202–3849.	Michael Figgins, (904) 356–8371 x325.	4	723,293.00
Secretary Initiated Projects/Contracts			
TE Systems, Inc., 7700 Leesburg Pike, Suite 316, Falls Church, VA 22043.	Tomas Esterrich, 703–734–9500	4	400,000.00
DB Consulting Group, Inc., 1100 Wayne Ave., Suite 801, Silver Spring, MD 20910.	Gerald B. Boyd, Jr., 301–589–4020.	6	499,751.00
DB Consulting Group, Inc., 1100 Wayne Ave., Suite 801, Silver Spring, MD 20910.	Gerald B. Boyd, Jr., 301–589–4020.	6	599,816.00
DB Consulting Group, Inc., 1100 Wayne Ave., Suite 801, Silver Spring, MD 20910.	Gerald B. Boyd, Jr., 301–589–4020.	6	494,891.00

[FR Doc. E6–14664 Filed 9–5–06; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 6, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Louisiana State University, Baton Rouge, LA, PRT–127167

The applicant requests a permit to import tissue samples from live wild-origin captive held Siamese crocodiles (*Crocodylus siamensis*) from the Phnom Tamao Wildlife Rescue Center in Cambodia for the purpose of scientific research.

Applicant: Crawford, Graham, DVM, Sonoma, CA, PRT–130334

The applicant requests a permit to import blood and tissue samples from live wild lemurs (*Lemur catta*) from Madagascar for the purpose of scientific research.

Dated: August 11, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–14682 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
758093	Florida Marine Research Institute (Fish & Wildlife Research Institute), Florida Fish & Wildlife Conservation Commission.	71 FR 35692; June 21, 2006	July 28, 2006.
122420	Robert B. Turner	71 FR 37602; June 30, 2006	August 3, 2006.
122437	James D. Giles	71 FR 37604; June 30, 2006	August 3, 2003.
122618	Brett H. Woodard	71 FR 31197; June 1, 2006	August 3, 2003.
126631	Michael T. Yeary	71 FR 37604; June 30, 2006	August 3, 2003.
126766	Mark A. Wayne	71 FR 37604; June 30, 2006	August 3, 2003.,
127007	George F. Gehrman	71 FR 37604; June 30, 2006	August 3, 2003.
127651	Paul J. Ritz	71 FR 37604; June 30, 2006	August 3, 2006.
128023	Thomas M. Baker	71 FR 37604; June 30, 2006	August 3, 2006.
128031	Sterling G. Fligge, II	71 FR 37604; June 30, 2006	August 3, 2006.

ENDANGERED MARINE MAMMALS AND MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
122050	Kevin Moloney	71 FR 28881; May 18, 2006	July 26, 2006.

Dated: August 11, 2006.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–14684 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Recovery Plan for the Endangered Spring Creek Bladderpod (Lesquerella perforata)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the final recovery plan for the endangered Spring Creek bladderpod (*Lesquerella perforata*). This species is an annual plant endemic to the Central Basin in Tennessee. It is currently known from only three watersheds (Spring Creek, Bartons Creek, and Cedar Creek) in Wilson County, Tennessee. The recovery plan includes specific recovery objectives and criteria to downlist this species to threatened status and delist it under the Endangered Species Act of 1973, as amended (Act).

ADDRESSES: Printed copies of this recovery plan are available by request from the Tennessee Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501 (telephone 931/528–6481). An electronic copy of the recovery plan is available on the World Wide Web at *http://www.fws.gov/endangered/recovery/index.html.*

FOR FURTHER INFORMATION CONTACT: Timothy Merritt, Recovery Coordinator, at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Act and our endangered species program. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the necessary recovery measures.

Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. The technical agency draft recovery plan for the Spring Creek bladderpod was available for public comment from September 12, 2005, through November 14, 2005 (70 FR 53808). We received no comments from interested parties. We received comments from the three Spring Creek bladderpod experts who served as official peer reviewers of the recovery plan. The comments and information submitted by peer reviewers were considered in the preparation of this final plan and, where appropriate, were incorporated into the plan.

The Spring Creek bladderpod was listed as endangered on January 22, 1997 (61 FR 67493). This annual plant, endemic to the Central Basin in Tennessee, is restricted to the floodplains of three creeks (Bartons, Spring, and Cedar) in Wilson County, Tennessee. It can be found in agricultural fields, pastures, glades, and disturbed areas. The Spring Creek bladderpod requires some degree of disturbance, such as scouring from natural flooding or plowing of the soil, to complete its life cycle.

Factors contributing to its endangered status are an extremely limited range and loss of habitat. The main threat is the loss of habitat by conversion of land to uses other than cultivation of annual crops, primarily rapid commercial, residential, and industrial development occurring throughout Wilson County. Encroachment of more competitive herbaceous and woody plants also presents a threat.

The objective of this recovery plan is to provide a framework for the recovery of this species so that protection under the Act is no longer necessary. The recovery plan includes specific recovery objectives and downlisting and delisting criteria. As recovery criteria are met, the status of the species will be reviewed and it will be considered for removal from the Federal List of Endangered and Threatened Plants (50 CFR 17.12). Actions needed to recover the Spring Creek bladderpod include: (1) Protect and manage existing occurrences and habitats; (2) develop and implement management strategies for the species; (3) develop communication with local officials to coordinate county planning; (4) utilize existing environmental laws to protect the plant and its floodplain habitat; (5) conduct monitoring at all sites; (6) conduct seed ecology studies; (7) search for new populations; (8) establish new occurrences within the historic range; (9) maintain seed source ex situ; (10) develop and implement public education plans; (11) annually assess the success of recovery efforts for the species.

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 12, 2006.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. E6–14689 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Integrated Resource Management Plan for the Spokane Indian Reservation, Stevens County, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA), in cooperation with the Spokane Tribe of Indians (Tribe), intends to file a Draft Environmental Impact Statement (DEIS) for the proposed Integrated Resource Management Plan (IRMP) for the Spokane Indian Reservation, Washington, with the U.S. Environmental Protection Agency, and that the DEIS is now available for public review. The purpose of the proposed action is to update the Tribe's existing IRMP, in order to provide for the development of long-term resource management policies that will ensure direction and stability for sustained growth of reservation economics, compatible with traditional values and needs for a quality human environment. This notice also announces a public hearing to receive public comments on the DEIS.

DATES: Written comments must arrive by November 6, 2006. The public hearing will be held September 27, 2006, starting at 5:30 p.m. and continuing until all those who wish to make statements have been heard.

ADDRESSES: You may mail, hand carry, or fax written comments to Donna R. Smith, Geologist, Bureau of Indian Affairs, Spokane Agency, Agency Square, Building 201, P.O. Box 389, Wellpinit, Washington 99040, fax (509) 258–7542. Please include your name and mailing address with your comments so documents pertaining to this project may be sent to you. You may also e-mail comments to *irmp@spokanetribe.com*.

The public hearing will be at the Alfred McCoy Building, Ford/Wellpinit Road, Wellpinit, Washington.

Persons wishing copies of this DEIS should immediately contact the Spokane Tribe of Indians, Attention: Rudy Peone, Department of Natural Resources, P.O. Box 480, Wellpinit, Washington 99040; Telephone (509) 258–9042. The DEIS is also available on line at *http://www.spokanetribe.com/d_n_r_.htm*. An abstract of the DEIS has been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies of the document.

FOR FURTHER INFORMATION CONTACT: Rudy Peone, (509) 258–9042.

SUPPLEMENTARY INFORMATION: The proposed BIA action is approval of the Tribe's updating and implementation of an IRMP. The proposed IRMP covers a period of 10 years and addresses resources of value on all of the approximately 157,000 acres within the boundaries of the Spokane Indian Reservation and/or under the jurisdiction of the Tribe, including, but not limited to, air quality, cultural resources, fisheries, wildlife, timber, surface and ground water resources, range, agriculture, recreation, mining, residential development, economic development land uses, and infrastructure. The updated IRMP would be implemented in fiscal year 2007 by both the BIA and Spokane Tribe.

The DEIS analyzes a range of feasible alternatives to address both current and projected needs over the next 10 years. These alternatives are as follows:

(1) No Action, which would continue the existing IRMP with no change in management style;

(2) Preservation and Cultural Emphasis, which would provide the

greatest level of environmental and cultural protection;

(3) Preservation of All Future Uses (preferred alternative), with outcome based performance which would balance ecological and cultural values with the need for income;

(4) Growth and Economic Emphasis, which would allow decisions to be driven by economics; and

(5) Individual Freedom Emphasis, which would allow individuals maximum freedom to develop land within the current regulatory framework.

Other government agencies and members of the public have contributed to the scoping of these alternatives and the preparation of the DEIS. A Notice of Intent to Prepare an EIS for the proposed IRMP for the Spokane Indian Reservation, inviting comments on the scope and content of the EIS, was published in the **Federal Register** on January 9, 2003 (68 FR 1190). A public scoping meeting followed on January 23, 2003, in Wellpinit, Washington, in order to obtain further input from the Tribe, from Federal, State, and local Agencies, and from the interested public.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: August 23, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–14686 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–1232–NX–NV19; Special Recreation Permit #NV–025–06–01]

Notice to the Public of Temporary Public Lands Closures and Prohibitions of Certain Activities on Public Lands Administered by the Bureau of Land Management, Winnemucca Field Office, NE

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: Notice is hereby given that certain lands located in northwestern Nevada partly within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area will be temporarily closed or restricted and certain activities will be temporarily prohibited in and around the Burning Man event site administered by the BLM Winnemucca Field Office in Pershing County, Nevada.

The specified closures, restrictions and prohibitions are made in the interest of public safety at and around the public lands location of an event known as the Burning Man Festival. This event is authorized on public lands under a special recreation permit and is expected to attract approximately 37,000 participants this year.

In summary, these lands will be closed or restricted with regard to the following:

- August 11, 2006 through September 18, 2006 inclusive: Discharge of firearms, possession of weapons, waste water disposal, camping, and circumstances and procedures for eviction of persons from public lands.
- August 25, 2006 through September 4, 2006 inclusive: Aircraft landing, possession of fireworks, possession of alcohol by minors, vehicle use, and all public uses.

1. Public Closure Area: Within the Following Legally Described Locations

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E., secs. 1 and 2, portion west of the east playa road; sec. 3; sec. 4, portion east of County Rd. 34; sec. 5, E½, portion east of County Rd. 34; sec. 10, N½; sec. 11; E½, portion west of the east playa road.

Unsurveyed T. 33½ N., R. 24 E., secs. 25 and 26; sec. 28, portion east of the west playa road; sec. 33, portion east of County Rd. 34 and east of the west playa road; secs. 34, 35 and 36.

Unsurveyed T. 34 N., R. 24 E., sec. 34, S½, portion east of the west playa road; sec. 35, S½; sec. 36, S½.

T. 33 N., R. 25 E., sec. 4, Lots 3, 4 and 5; portions west of the east playa road.

Unsurveyed T. 34 N., R. 25 E., sec. 33, SW¼.

1.1. Between August 11, 2006 and September 18, 2006 Inclusive

1.1.1. Public Use

Public use is prohibited except as provided within the Event Area as described below.

1.1.2. Public Camping

Public camping is prohibited except as provided within the Event Area as described below.

1.1.3. Aircraft Landing

Aircraft are prohibited from landing, taking off, or taxiing. The following exceptions apply: Aircraft operations conducted through the authorized event landing strip and such ultralight and helicopter take-off and landing areas for Burning Man event staff and participants as may be included in the annual operation plan submitted by Black Rock City, LLC and approved by the authorized officer; and law enforcement, and emergency medical services aircraft such as Care Flight, Sheriff's Office, or Medical Ambulance Transport System helicopters engaged in official business may land in other locations when circumstances require it.

Note: The authorized event airstrip and adjacent designated ultra-light and helicopter landing areas are the only location where Burning Man event staff and participant aircraft may land or take off.

1.1.4. Possession of Alcohol

Possession of alcohol by minors is prohibited.

- The following are prohibited:
  - Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.
  - Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.
- This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

1.1.5. Weapons

Discharge of firearms prohibited. Law enforcement officers acting in their official capacity are exempted from the prohibition.

1.1.6. Eviction of Persons from Public Closure Area

The permitted event area and all other parts of the public closure area are closed to any person who:

(a) Has been ordered by a BLM law enforcement officer, during the period of August 11th to September 18th, 2006, to leave the area of the permitted event.

(b) Has been evicted from the event by the permit holder, BRC LLC, whether or not such eviction was requested by BLM.

Any person located within the Public Closure Area, whether or not that person holds a ticket to attend, must immediately depart from the event if ordered to do so by a BLM law enforcement officer for good cause. Good cause includes, but is not limited to: repeated violations of any permit stipulations or regulations in Title 43 CFR; possession of prohibited weapons; or commission of an assault, fighting, threatening, menacing, or similar conduct that is likely to inflict injury or incite an immediate breach of the peace.

Possession of a ticket to attend the event does not authorize any person evicted from the event during the period of August 11 to September 18, 2006 to be present within the perimeter fence or anywhere else within the public closure area during those same dates.

1.1.7. Waste Water Discharge

Dumping wastewater (grey or black) is prohibited.

1.2. Between August 26, 2006 and September 4, 2006 Inclusive:

1.2.1. Public Camping

Public camping is prohibited. Burning Man event ticket holders and BLM-authorized event management-related camps within the event area as described below are exempt from the camping closure.

1.2.2. Motorized Vehicles

Motor vehicle use is prohibited. The following exceptions apply: Participant arrival and departure on designated routes; mutant vehicles registered with Burning Man; Black Rock City LLC staff and support; BLM, medical, law enforcement, and firefighting vehicles; and motorized skateboards or "Go Peds" with or without handlebars. Mutant vehicles must be registered with Burning Man/Black Rock City LLC and drivers must display evidence of registration at all times. Such registration must be displayed so that it is visible to the rear of the vehicle while it is in motion.

Vehicle use that creates a dust plume higher than the top of the vehicle is prohibited.

1.2.3. Fireworks

The use, sale or possession of personal fireworks within is prohibited.

The following exceptions apply: Uses of fireworks approved by Black Rock City LLC and used as part of an official Burning Man art burn event.

1.2.4. Fires

The ignition of fires on the surface of the Black Rock Playa without a burn blanket or burn pan is prohibited. The following exceptions apply: Licensed mutant vehicles, community burn platforms provided by Black Rock City LLC, and portable barbeques or grills.

2. Event Area: Within the Following Legally Described Locations

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E., secs. 1 and 2, portions within event perimeter fence, 50 yards outside the fence and the aircraft parking area; sec. 3; portion within event perimeter fence, 50 yards outside the fence and within 50 yards of the event entrance road.

Unsurveyed T. 33½ N., R. 24 E., secs. 25, 26 and 27, portions within event perimeter fence and 50 yards outside the fence; sec. 34, portions within event perimeter fence and 50 yards outside the fence; sec. 35; sec. 36, portions within event perimeter fence and 50 yards outside the fence.

Unsurveyed T. 34 N., R. 24 E., secs. 34, 35 and 36, portions within event perimeter fence and 50 yards outside the fence.

2.1. Between August 11, 2006 and August 25 and Between September 5th and September 18, 2006 Inclusive

2.1.1. Camping

Public camping is prohibited. Black Rock City LLC authorized staff, contractors, and others authorized to assist with construction or clean-up of art exhibits and theme camps are exempt from the camping closure.

2.2. Between August 26th and September 4th, 2006 Inclusive

2.2.1. Public Use

No person shall be present within the event area unless that person: Possesses a valid ticket to attend the event; is an employee with the BLM, a law enforcement agency, emergency medical service provider, fire protection provider, or another public agency working at the event and the employee is assigned to the event; or is a person working at or attending the event on behalf of the event organizers, BRC LLC.

2.2.2. Weapons

Possession of weapons is prohibited, subject to the following exceptions: County, state, tribal, and federal law enforcement personnel, or any person authorized by federal law to carry a concealed weapon.

"Weapon" means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, spear gun, hand thrown spear, sling shot, irritant gas device, explosive device or any other implement designed to discharge missiles, and includes any weapon the possession of which is prohibited by state law.

2.2.3. Public Camping

Public camping is prohibited. Burning Man event ticket holders who are camped in designated areas provided by Black Rock City LLC and ticket holders who are camped in the authorized "pilot camp" and BLM-authorized event management-related camps are exempt from the camping closure. Black Rock City LLC authorized staff, contractors, and other authorized participants are exempt from the camping closure.

DATES: August 11, 2006 to September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Dave Cooper, National Conservation Area Manager, Bureau of Land Management, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445–2921, telephone: (775) 623–1500.

Authority: 43 CFR 8364.1.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: July 10, 2006.

Gail G. Givens,

Field Manager.

[FR Doc. E6–14668 Filed 9–5–06; 8:45 am

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW172929]

Notice of Invitation for Coal Exploration License Application Wyoming; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license application, Jacobs Ranch Coal Company, WYW172929, Wyoming; correction.

SUMMARY: The Bureau of Land Management published in the **Federal Register** of August 18, 2006, (71 FR 47826) a notice inviting all interested parties to participate with Jacobs Ranch Coal Company on a *pro rata* cost sharing basis in its program for the exploration of coal deposits owned by the United States of America. Inadvertently, the following lands included in the exploration license application were omitted from the notice.

T. 44 N., R. 70 W., 6th P.M. Wyoming
Sect 22: Lots 1–3, 5–10, 12–15.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program must send written notice to both the Bureau of Land Management and Jacobs Ranch Coal Company no later than thirty days after publication of this invitation in the **Federal Register**.

August 21, 2006.

Alan Rabinoff,

Deputy State Director, Minerals and Lands.

[FR Doc. 06–7430 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–06–1310–DB, CO–100–06–1310–DB]

Notice of Intent (NOI) To Prepare an Environmental Impact Statement and Provide Notice of Public Meetings, Hiawatha Regional Energy Development Project, Sweetwater County, WY, and Moffat County, CO, and Notice of the Potential for an Amendment to the Green River Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: NOI to prepare an Environmental Impact Statement (EIS) and to conduct public scoping for the Hiawatha Regional Energy Development Project, Sweetwater County, Wyoming and Moffat County, Colorado, and notice of potential for an amendment to the Green River Resource Management Plan, Rock Springs Field Office.

SUMMARY: Under the provisions of section 102(2)(C) of the National Environmental Policy Act (NEPA), the BLM announces its intentions to prepare an EIS and to solicit public comments regarding issues and resource information for the proposed Hiawatha Regional Energy Project, a natural gas development project consisting of conventional natural gas well development in established, producing fields.

DATES: The BLM can best use public input if comments and resource information are submitted within 45 days from publication of this notice. To provide the public with an opportunity to review the proposal and project information, the BLM will host two public meetings; one in Rock Springs, Wyoming, and another in Craig, Colorado. The BLM will notify the public of the date, time, and location of each meeting at least 15 days before the event. The announcement will be made by a news release to the media in Wyoming and Colorado, individual mailing of a scoping notice, and posting on the Web sites listed below.

ADDRESSES: Written comments or resource information can be mailed to the Field Office at: Bureau of Land Management, Rock Springs Field Office, *Attn:* Hiawatha Regional Energy Project, 280 Hwy 191 North, Rock Springs, WY 82901; the public may submit comments electronically at *Hiawatha_EIS_WYMail@BLM.gov.* Project information and documents will be available on the Web at *http://www.blm.gov/eis/wy/hiawatha.*

All comments and submissions will be considered in the environmental analysis process. If you do comment, we will keep you informed of decisions resulting from the analysis. Please note that public comments and information submitted in regard to this project, including names and street addresses of respondents, will be available for review and disclosure at the Field Office. Individual respondents may request confidentiality. If you wish to withhold your name, e-mail, and street address from public review or from disclosure under the Freedom of Information Act, you must state this plainly at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For information regarding the project, please contact Susan Davis, Project Lead, at 307–352–0346.

SUPPLEMENTARY INFORMATION: The Hiawatha Regional Energy Project is generally located in Townships 11 through 14 North, Ranges 99 through 102 West, 6th Principal Meridian, Sweetwater County, Wyoming and Moffat County, Colorado. The project is located south of Rock Springs, Wyoming, and northwest of Craig, Colorado. The project area contains approximately 157,335 acres of mixed Federal, State, and private lands. The BLM Rock Springs Field Office manages public lands in Sweetwater County, Wyoming, and the BLM Little Snake Field Office manages public lands in Moffat County, Colorado. The Rock Springs Field Office will serve as the lead for this project.

Any authorizations and actions proposed for approval in the EIS will be evaluated to determine if they conform to the decisions in the 1997 Green River RMP. Actions that result in a change in the scope of resource uses, terms and conditions, and decisions of the Green River RMP may require amendment of the RMP. If the Bureau of Land Management (BLM) determines that a plan amendment is necessary, preparation of the Hiawatha Regional Energy Development EIS and the analysis necessary for the RMP amendment would occur simultaneously. Based on the information developed during the course of this analysis, the BLM may decide it is necessary to amend the 1997 Green River Resource Management Plan (RMP). The potential for amendment of the Green River RMP does not affect the Little Snake RMP.

The ongoing (2006) Little Snake Field Office land use plan revision (NOI November 18, 2004) contains an updated RFD that provides a reasonable estimate of projected oil and gas exploration and development for the entire Field Office planning area for the next 20 years. This reasonable foreseeable development (RFD) encompasses the project area to be analyzed and incorporates the level of development proposed in the Hiawatha Regional Energy Project EIS. The proposed action will be within the scope of the analysis for the ongoing Little Snake Field Office RMP revision and any land use planning decisions relating to the Hiawatha Project will be addressed as part of the ongoing Little Snake Field Office planning process. Further information of the status of this RMP revision may be obtained from the Little Snake Field Office's Web site at *http://www.co.blm.gov/lsra/rmp.*

In March 2006, Questar Exploration & Production Company, Wexpro Company, and other natural gas development companies (hereinafter referred to as ("the Operators") submitted to the BLM a proposal to expand natural gas exploration and

development operations in existing fields. The purpose of the proposal is to extract and recover natural gas for distribution to consumers. The Operators' proposal consists of development of up to 4,207 wells and associated facilities including but not limited to roads, well pads, pipelines, gas treatment and possible compression resulting in approximately 25,820 acres of short-term disturbance and 9,058 acres of life-of-project disturbance. Wells would be drilled using a combination of vertical and directional drilling techniques. The proposal calls for a 20- to 30-year construction and drilling period with another 30 years for the project operations.

The Hiawatha Regional Energy Development Project is located in an area of existing oil and gas development known as Canyon Creek, Trail, and Kinney Fields (also known as the Vermillion Basin area) in Sweetwater County, Wyoming, and the East and West Hiawatha/Sugarloaf Fields in Moffat County, Colorado. This project would meet the goals and objectives of the Energy Policy Act of 2005 and the President's National Energy Policy.

During the preparation of the EIS, development within the project area may be allowed in Wyoming as approved under the Modified Decision Record for the Vermillion Basin Natural Gas Exploration and Production Project. Other interim development will be subject to interim development guidelines on the Wyoming portion of the project.

The EIS will analyze the environmental consequences of implementing the proposed action and alternatives to the proposed action including the No Action alternative. Other alternatives under consideration include a range of drilling surface densities and pace, mitigation measures, best management practices and phased development.

Agency resource issues and concerns will be identified in the public scoping notice mailed to Federal, State and local governments, interested groups, individuals, and businesses under separate cover.

Dated: June 30, 2006.

Robert A. Bennett,

State Director.

[FR Doc. E6–14670 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–090–1610–DO–048E]

Notice of Intent To Prepare a Resource Management Plan for the Malta Field Office and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA) the Bureau of Land Management (BLM), Malta Field Office intends to prepare a Resource Management Plan with an associated Environmental Impact Statement (RMP/EIS). The planning area is located in Blaine, Choteau, Glacier, Hill, Liberty, Phillips, Toole, and Valley Counties, Montana. The public scoping process will identify planning issues and develop planning criteria, including evaluation of the existing RMPs in the context of the needs and interests of the public. This notice initiates the public scoping process.

DATES: To be most helpful you should submit formal scoping comments within 60 days after publication of this Notice. However, collaboration with the public will continue throughout the process. All public meetings will be announced through the local news media, newsletters, and the BLM Web site (*http://www.mt.blm.gov/mafo/rmp*) at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

ADDRESSES: Written comments should be sent to Bureau of Land Management, G. Claire Trent, RMP Project Manager, Malta Field Office, 501 S 2nd St. East, Malta, MT 59538; Fax—406–654–5150. Documents pertinent to this proposal may be examined at the Malta Field Office. Respondents' comments, including their names and street addresses, will be available for public review at the Malta Field Office during regular business hours from 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact G. Claire Trent at (406) 654–5124 or e-mail at: *MT_Malta_RMP@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, public scoping meeting locations will be rotated among the towns of Big Sandy, Billings, Browning, Chester, Chinook, Cut Bank, Fort Benton, Glasgow, Great Falls, Harlem, Helena, Havre, Hays, Malta, Opheim, Rocky Boy, Shelby, Turner, and Whitewater. Early participation is encouraged, and will help determine the future management of public lands administered by the Malta Field Office. In addition to the ongoing public participation process, formal opportunities for public participation will be provided upon publication of the Draft RMP/EIS, the final Proposed Plan, and Record of Decision.

The Bureau of Land Management's Malta Resource Management Plan and Environmental Impact Statement incorporates a planning area administered by three BLM offices: the Glasgow and Havre Field Stations, and the Malta Field Office. These offices were recently combined under the Malta Field Office [Notice of Montana/Dakotas Administrative Boundaries Resulting from the Havre Field Station Realignment and other Organizational Changes, (IM No. MT–2005–041)]. The land area to be covered under the Malta RMP/EIS is approximately two and a half million surface acres (~2,500,000) and three- and a half million subsurface acres (~3,500,000) of public land in the north-central tier of the State of Montana. Currently, land resources are managed under the following decisions: the 1988 West HiLine RMP as amended in 1992, for portions of the planning area administered by the Havre Field Station; and the 1994 Judith, Valley, Phillips (JVP) RMP for the remainder of the planning areas administered by the Malta Field Office and Glasgow Field

Station. The current JVP RMP does not include oil and gas planning decisions. Oil and gas planning decisions for these lands are under the Management Framework Plans and the supporting National Environmental Policy Act (NEPA) document—Lewistown District Oil and Gas Environmental Assessment of BLM Leasing Program (September 1981).

Some of the BLM-managed public lands (226,920 acres) analyzed in the West HiLine and JVP RMPs have recently become a part of the Upper Missouri River Breaks National Monument, which will be managed under a separate RMP.

The RMP revision to be prepared for the public lands administered by the Malta Field Office will identify goals, objectives, standards, and guidelines for management of a variety of resources and values. The scope of the RMP will be comprehensive. The plan will specify actions, constraints, and general management practices necessary to achieve desired conditions. The plan will also identify any areas requiring special management such as Areas of Critical Environmental Concern (ACECs). Certain existing standards and guidelines and other BLM plans/plan amendments will be incorporated into the RMP.

In accordance with the National Energy Policy Act of 2005, the BLM is implementing long-term strategies to produce traditional sources of energy on Federal land in an environmentally compatible way, to increase renewable energy production on Federal land, and to involve all interested persons in the public planning process. The significant amount of oil and gas leasing, exploration, and development throughout this part of Montana is a major reason for revising these RMPs. The BLM is involved in managing more than 1500 oil and gas leases across the planning area, and an increasing interest in leasing has created a pressing need for new inventories and revised data. The BLM needs this information to evaluate oil and gas planning decision alternatives. Increased interest in developing alternative energy resources such as wind and solar power have also impacted the planning area, but these activities were not addressed in either current RMP. Also, in recent years, greater sage-grouse, black-tailed prairie dogs and prairie dog associate special status species (SSS) such as burrowing owls and mountain plovers, and migratory birds, in particular SSS associated with grassland habitats, will be addressed in the RMP planning process.

The BLM's decision to begin a new planning effort for the public lands in the Malta resource area is based on public and agency need for revised management guidance to address changing issues. Preliminary issues and management concerns have been identified by BLM, other agencies, and in meetings with individuals and user groups. They represent the BLM's information to date on the existing issues and concerns with current management. The major issue themes that will be addressed in the RMP effort include the following:

1. Energy development—(fluid minerals—oil and gas; alternative—wind);
2. Management of vegetation;
3. Management of wildlife;
4. Conservation and recovery of special status species;
5. Water quality, quantity, and aquatic species;
6. Travel management and access to public lands;
7. Management of areas with special values;
8. Availability and management of public lands for commercial uses; and
9. Land tenure adjustments.

After gathering public comments on what issues the plan should address, the suggested issues will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided for each issue placed in categories two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

An interdisciplinary approach will be used to develop the plan in order to consider the variety of resource issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in minerals and geology, forestry, range, fire and fuels, outdoor recreation, archaeology, paleontology, wildlife and fisheries, lands and realty, hydrology, soils, sociology, environmental justice and economics.

The following planning criteria have been proposed to guide development of the plan, avoid unnecessary data collection and analyses, and to ensure the plan is tailored to the issues. Other criteria may be identified during the public scoping process. After gathering comments on planning criteria, the BLM will finalize the criteria and provide feedback to the public on the criteria to be used throughout the planning process.

- The RMP/EIS will comply with FLPMA, NEPA, and all other applicable laws and regulations.
- The plan amendment will recognize the existence of valid existing rights.
- Lands covered in the RMP amendment will be public lands, which include split estate lands, managed by BLM. Decisions in the RMP amendment will be made only on lands managed by the BLM.

The RMP/EIS will utilize existing guidance where appropriate, and establish new guidance for managing the public lands within the Malta Field Office.

- The RMP/EIS will incorporate by reference the *Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Montana, North Dakota and South Dakota* (August 1997), the *Wind Energy Final Programmatic Environmental Impact Statement* (June 2005), the *Off-Highway Vehicle Environmental Impact Statement and Plan Amendment for Montana and the Dakotas* (June 2003), and the *Montana/Dakotas Statewide Fire Management Plan* (September 2003).
- The RMP/EIS will incorporate by reference all prior Wilderness designations and Wilderness Study Area findings that affect public lands in the planning area.
- The RMP/EIS will recognize the State's responsibility to manage wildlife populations, including uses such as hunting and fishing.
- Planning decisions will strive to be compatible with the existing plans and policies of adjacent local, State, tribal, and Federal agencies as long as the decisions are in conformance with BLM legal mandates.
- The BLM will use a collaborative and multi-jurisdictional approach, where applicable throughout the planning process.
- The scope of analysis will be consistent with the level of analysis in current approved plans and in accordance with Bureau-wide standards and program guidance.
- Resource allocations will be reasonable and achievable within available technological and budgetary constraints.
- The lifestyles and concerns of area residents will be recognized in the plan.

Dated: June 9, 2006.

Mark Albers,

Malta Field Office Manager.

[FR Doc. E6–14669 Filed 9–5–06; 8:45 am]

BILLING CODE 4311–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–310–1060–HI; AZA 33148]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw on behalf of the Bureau of Land Management (BLM) approximately 299.70 acres of public land for a period of 20 years to protect the Kingman Regional Wild Horse and Burro Facility in Mohave County, Arizona. This notice segregates the land for up to 2 years from location and entry under the United States mining laws.

DATES: Comments should be received on or before December 5, 2006.

ADDRESSES: Comments and meeting requests should be sent to the Kingman Field Office Manager, BLM, 2755 Mission Boulevard, Kingman, Arizona 86401.

FOR FURTHER INFORMATION CONTACT: Scott Elefritz, BLM Kingman Field Office, (928) 718–3720.

SUPPLEMENTARY INFORMATION: The applicant for the above withdrawal is the BLM at the address stated above. The petition/application requests the Secretary of the Interior to withdraw for a period of 20 years the following-described public land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

T. 20 N., R. 17 W.
Sec. 6, lots 2, 3, 4, 12, 13, 39, 42, and 44.

The area described contains 299.70 acres in Mohave County.

The BLM petition/application has been approved by the Assistant Secretary of the Interior. Therefore, it constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The use of a right-of-way or cooperative agreement would not adequately constrain non-discretionary uses and would not provide adequate protection of the Federal investment in the improvements located on the land.

There are no suitable alternative sites with equal or greater benefit to the government.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

The preliminary mineral potential evaluation found the above described lands to have a low potential for locatable minerals.

The purpose of the proposed withdrawal would be to protect the proposed Federal investment in the BLM's Kingman Regional Wild Horse and Burro Facility.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the BLM Kingman Field Office Manager.

Records relating to the application as well as comments, including names and street addresses of respondents, will be available for public review at the BLM Kingman Field Office, 2755 Mission Boulevard, Kingman, Arizona, during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Kingman Field Office Manager.

The withdrawal proposal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-ways, and disposal of vegetative resources other than under the mining laws.

(Authority: 43 CFR 2310.3–1)

Dated: August 25, 2006.

Michael A. Taylor,

Deputy State Director, Resources.

[FR Doc. E6–14672 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska Region, Outer Continental Shelf, Beaufort Sea Planning Area, Oil and Gas Lease Sale 202 (2007)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of availability of an Environmental Assessment (EA) and Finding of No New Significant Impact (FONNSI).

SUMMARY: The Minerals Management Service has prepared an environmental assessment and a Finding of No New Significant Impact for the proposed Alaska Region Outer Continental Shelf (OCS) Beaufort Sea Planning Area Lease Sale 202. In this EA, OCS EIS/EA MMS 2006–001, MMS reexamined the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Alaska Region OCS Beaufort Sea Planning Area Oil and Gas Lease Sales 186, 195, and 202, Final Environmental Impact Statement, Volumes I through IV (multiple-sale EIS) was completed in February 2003.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Alaska OCS Region, 3801 Centerpoint Drive, #500, Anchorage, Alaska 99503–5823, Ms. Deborah Cranswick, telephone (907) 334–5267.

SUPPLEMENTARY INFORMATION: Proposed Beaufort Sea Planning Area Lease Sale 202 is the third Beaufort Sea Planning Area lease sale scheduled in the current OCS Oil and Gas Leasing Program: 2002–2007 (5-Year Program). The multiple-sale EIS analyzed the effects of three lease sales considering resource estimates, project exploration and development activities, and impact-producing factors for each of the proposed Beaufort Sea Planning Area lease sales. The resource estimates and level of activities projected for proposed Lease Sale 202 remains essentially the same as examined in the multiple-sale EIS. No new significant impacts were identified for proposed Lease Sale 202 that were not already assessed in the multiple-sale EIS. The FONNSI reflects the MMS determination that a supplemental EIS is not required.

Available for Review: To obtain a copy of the EA and FONSI, you may contact the Minerals Management Service, Alaska OCS Region, Attention: Resource Center, 3801 Centerpoint Drive, #500, Anchorage, Alaska 99503–5823, telephone 1–800–764–2627. You may also view the EA on the MMS Web site at *http://www.mms.gov/alaska.*

Written Comments: Interested parties may submit their written comments on this EA/FONNSI until 30 days after the publication of this notice, to the Regional Director, Alaska OCS Region, Attention: Sale 202 EA Coordinator, Minerals Management Service, 3801 Centerpoint Drive, #500, Anchorage, Alaska 99503–5823, or you may provide electronic comments at *http://ocsconnect.mms.gov/pcs-public/.* Our practice is to make comments, including names and home addresses of respondents available for public review. An individual commenter may ask that we withhold their name, home address, or both from the public record, and we will honor such a request to the extent allowable by law. If you submit comments and wish us to withhold such information, you must state so prominently at the beginning of your submission. We will not consider anonymous comments, and we will make available for inspection in their entirety all comments submitted by organizations or businesses or by individuals identifying themselves as representatives of organizations or businesses.

Dated: August 22, 2006.

Robert P. LaBelle,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. E6–14745 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for a White-tailed Deer Management Plan, Cuyahoga Valley National Park, Ohio

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the National Park Service (NPS) is preparing an environmental impact statement (EIS) for the White-tailed Deer Management Plan for Cuyahoga Valley National Park (Cuyahoga). The purpose of the plan/EIS is to develop a deer management plan that supports long-term protection, preservation, and restoration of native species and other park resources. A scoping brochure has been prepared that details the issues identified to date and preliminary alternatives to be considered. Copies of that information may be obtained by mail from Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, Ohio 44141, telephone 330–650–5071, extension 1, or the Planning, Environment and Public Comment (PEPC) Web site at *http://www.parkplanning.nps.gov/cuva.* Once on the PEPC site, click on the link titled Cuyahoga Valley National Park Deer Management Plan/EIS.

DATES: To be most helpful to the scoping process, comments should be received within 60 days from the date this noticed is published in the **Federal Register**. In addition, the NPS intends to conduct public scoping open houses at the park. Please check local newspapers; the park's Web site *http://www.nps.gov/cuva*; or contact the name listed below to find out when and where these open houses will be held.

ADDRESSES: Information will be available for public review and comment at the park headquarters located at 15610 Vaughn Road, Brecksville, Ohio 44141.

FOR FURTHER INFORMATION CONTACT: Dr. Lisa Petit, Chief of Science and Resource Management, Cuyahoga Valley National Park, telephone, 330–650–5071, extension 1.

SUPPLEMENTARY INFORMATION: Under the provisions of the National Environmental Policy Act of 1969, the NPS is preparing an EIS for a White-tailed Deer Management Plan for Cuyahoga Valley National Park. The purpose of this plan and environmental impact statement is to develop a deer management plan that supports long-term protection, preservation, and restoration of native species and other park resources. A deer management plan is needed at this time to ensure that: Deer do not become the dominant force in the ecosystem, adversely impacting forest regeneration, sensitive vegetation and other wildlife; natural distribution, abundance, and diversity of plant and animal species do not continue to be adversely affected by the large number of white-tailed deer in Cuyahoga Valley National Park; declining forest regeneration is addressed and deer browsing does not continue at a level that eliminates or reduces forest regeneration, and that adverse changes to wildlife habitat and forest structure and composition do not occur over time; the park's cultural landscape preservation goals and mandates are not compromised by the large number of white-tailed deer in Cuyahoga Valley National Park; and the protection of park resources and values benefits from coordination with other jurisdictional entities currently implementing deer management actions.

There are a number of objectives for this plan. One objective is to develop and implement informed, scientifically defensible vegetation and wildlife impact levels and corresponding measures of deer population size that would serve as thresholds for taking adaptive management actions within the park. The plan would also ensure that deer behavior, including browsing, trampling, and seed dispersal, does not adversely affect: Natural abundance, distribution, and diversity of native herbaceous and woody plant species; native vegetative species of concern, including rare, threatened or endangered species; and native vegetative species through dispersal, spread, and facilitation of exotic, invasive species. A third objective is to maintain a healthy white-tailed deer population within the park while protecting other park resources. In addition, the plan would ensure that deer behavior does not adversely affect the cultural landscape. Finally, the plan would enhance public awareness and understanding of NPS resource management issues, policies, and mandates, as they pertain to deer management; and ensure visitors the opportunity to view healthy deer in the natural environment at population levels that do not adversely impact visitors' enjoyment of other native species in the natural landscape.

Preliminary alternatives that will be considered to meet the purpose and need include: Landscape management, fencing, reproductive control, direct reduction, and a combination of these management strategies. The continuation of current management (no action alternative) will also be analyzed.

If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may submit your comments online through the NPS Planning, Environment and Public Comment (PEPC) Web site at *http://www.parkplanning.nps.gov/cuva.* Once on the PEPC Web site, click on the link titled Cuyahoga Valley National Park Deer Management Plan/EIS. Please submit Internet comments as text files, avoiding the use of special characters and any form of encryption. Please put "Deer Management" in the subject line and include your name and return

address in your message. If you do not receive a confirmation from the system that we have received your Internet message, contact Dr. Lisa Petit at 330–650–5071, extension 1, or *Lisa_Petit@nps.gov*. You may also mail comments to Resource Management, Cuyahoga Valley National Park, at the address given above. To aid in the scoping process, comments should be received within 60 days of the beginning of the public comment period.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Dated: August 29, 2006.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 06–7441 Filed 9–5–06; 8:45 am]

BILLING CODE 4310–MA–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–581]

In the Matter of Certain Inkjet Ink Supplies and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 1, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Hewlett-Packard Company of Palo Alto, California. An amendment to the complaint was filed on August 18, 2006. The complaint as amended alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain inkjet ink supplies and components thereof by reason of infringement of U.S. Patent No. 5,825,387, U.S. Patent No. 6,793,329, U.S. Patent No. 6,074,042, U.S. Patent No. 6,588,880, U.S. Patent No. 6,364,472, U.S. Patent No. 6,089,687, and U.S. Patent No. 6,264,301. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent limited exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint as amended, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint as amended, the U.S. International Trade Commission, on August 29, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain inkjet ink supplies or components thereof by reason of infringement of one or more of claims 1–4, 7–9, 22, 24, and 25 of U.S. Patent No. 5,825,387; claims 1–9 and 12 of U.S. Patent No. 6,793,329; claims 8–10, 14, and 15 of U.S. Patent No. 6,074,042; claims 1–6 and 19–29 of U.S. Patent No. 6,588,880; claims 1–7 and 11–18 of U.S. Patent No. 6,364,472; claims 6, 7, 9, and 10 of U.S. Patent No. 6,089,687; and claims 1–3 and 5 of U.S. Patent No. 6,264,301, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, California 94304.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ninestar Technology Co. Ltd., No. 63 Mingzhubei Road, Xiangzhou District, Zhuhai, Guangdong, China;

Ninestar Technology Company Ltd., 4620 Mission Boulevard, Montclair, California 91763;

Aurora Eshop, Inc. d/b/a *butterflyinkjet.com*, 2274 29th Avenue, San Francisco, California 94116;

IowaInk, LLC d/b/a *iowaink.com*, 1001 Office Park Rd., Suite 108, West Des Moines, Iowa 50265;

L2 Commerce, Inc. d/b/a *PrintMicro.com*, 718 Old San Francisco Rd., Sunnyvale, California 94086;

All Media Outlet Corp. d/b/a *Inkandbeyond.com*, 18545 E. Gale Ave., City of Industry, California 91748.

(c) The Commission investigative attorney, party to this investigation, is David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to

19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: August 31, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–14711 Filed 9–5–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–582]

In the Matter of Certain Hydraulic Excavators and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 1, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Caterpillar, Inc. of Peoria, Illinois. A letter supplementing the complaint was filed on August 23, 2006. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain hydraulic excavators and components thereof by reason of infringement of U.S. Trademark Registration No. 2,140,606, U.S. Trademark Registration No. 2,421,077, U.S. Trademark Registration No. 2,140,605, and U.S. Trademark Registration No. 2,448,848. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Rett Snotherly, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 29, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(C) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain hydraulic excavators or components thereof by reason of infringement of U.S. Trademark Registration No. 2,140,606, U.S. Trademark Registration No. 2,421,077, U.S. Trademark Registration No. 2,140,605, or U.S. Trademark Registration No. 2,448,848, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Caterpillar, Inc., 100 N.E. Adams Street, Peoria, Illinois 61629–7310.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Alex Lyon & Son Sales Managers and Auctioneers, Inc., 5100 Highbridge Road, Fayetteville, NY 13066.

Barkley Industries, LLC, 13309 West Palo Verde Dr., PO Box 579, Litchfield Park, AZ 85340.

Deanco Auction Company of Mississippi, Inc., 1042 Holland Avenue, PO Box 1248, Philadelphia, MS 39350.

Dom-Ex, Inc., 109 Grant Street, Hibbing, MN 55746.

Frontera Equipment Sales, 2300 East Expressway 83 N, Donna, TX 78537.

Hoss Equipment Co., Inc., 3131 N. Hwy. 161, Irving, TX 78537.

Key Equipment, LLC (subsidiary of) C.W. Purpero, Inc. 5770 South 13th St., Milwaukee, WI 53221.

Kuhn Equipment Sales Co., Inc., 1050 Drop Off Drive, Summerville, SC 29483.

MMS Equipment Sales L.L.C., 31 North Madison Drive, Three Way, TN 38343.

Musselman Construction Co., dba, Musselman Rentals and Sales, 16915 Hatwai Bypass, Lewistown, Idaho 83501.

Pacific Rim Machinery, Inc., 3023 17th Avenue Ct., NW., Gig Harbor, WA 98335.

Petrowsky Auctioneers, Inc., 275 Route 32, North Franklin, CT 06254.

Prima International Trading, 7000 Highbridge Road, Fayetteville, NY 13066.

Ritchie Bros. Auctioneers Inc., 6500 River Road, Richmond, BC V6X 4G5, Vancouver, British Columbia, Canada.

Ritchie Bros. Auctioneers (America) Inc., 3901 Faulkner Drive, P.O. Box 6429, Lincoln, NE 68506–0429.

Southwestern Machinery of Florida, Inc., 645 SW Palmetto Cove, P.O. Box 880037, Port St. Lucie, FL 34986.

Tractorland Equipment Company, Inc., 21921 Alessandro Blvd., Moreno Valley, CA 92553.

United Equipment Company, Inc., 600 W. Glenwood, Turlock, CA 95380–6232.

World Tractor & Equipment Company, LLC, 10600 Nations Ford Road, Charlotte, NC 28273.

Worldwide Machinery, Inc., 16031 I–10 East Freeway, Houston, TX 77530.

Yoder & Frey Auctioneers, 1670 Commerce Rd., Holland, OH 43528.

(c) The Commission investigative attorney, party to this investigation, is Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 31, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–14714 Filed 9–5–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–580]

In the Matter of Certain Peripheral Devices and Components Thereof and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 1, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Microsoft Corporation of Redmond, Washington. The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain peripheral devices and components thereof and products containing the same by reason of infringement of U.S. Patent No. 6,460,094 and U.S. Patent No. 6,795,949. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2575.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 29, 2006, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain peripheral devices or components thereof or products containing the same by reason of infringement of one or more of claims 1, 2, 27, 33, 34, and 59 of U.S. Patent No. 6,460,094 and claims 1 and 3 of U.S. Patent No. 6,795,949, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Microsoft Corporation, 1 Microsoft Way, Redmond, Washington 98052.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Belkin Corporation, 501 W. Walnut Street, Compton, California 90220.

(c) The Commission investigative attorney, party to this investigation, is T. Spence Chubb, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or

cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 30, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–14715 Filed 9–5–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–568]

In the Matter of Certain Products and Pharmaceutical Compositions Containing Recombinant Human Erythropoietin; Notice of Commission Decision Not To Review an Initial Determination Granting Respondents' Motion for Summary Determination That There is No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination ("ID") issued by the presiding administrative law judge ("ALJ") granting respondents" motion for summary determination that there is no violation of section 337 in the above-captioned investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Christal A. Sheppard, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On May 12, 2006, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Amgen, Inc. ("Amgen") of Thousand Oaks, California. 71 FR 27742 (May 12, 2006). The complaint asserted a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation into the United States, sale for importation, or sale within the United States after importation of certain products and pharmaceutical compositions containing recombinant human erythropoietin by reason of infringement of claims 1 and 2 of U.S. Patent No. 5,441,868, claims 3, 4, 5, and 11 of U.S. Patent No. 5,547,933, claims 4–9 of U.S. Patent No. 5,618,698, claims 4 and 6 of U.S. Patent No. 5,621,080, claim 7 of U.S. Patent No. 5,756,349, and claim 1 of U.S. Patent No. 5,955,422. The notice of investigation named Roche Holding Ltd. of Basel, Switzerland, F. Hoffman-La Roche, Ltd. of Basel, Switzerland, Roche Diagnostics GmbH of Mannheim, Germany, and Hoffman La Roche, Inc. of Nutley, New Jersey (collectively, "Roche") as respondents.

On May 19, 2006, Roche moved for summary determination of no violation of section 337, stating that its activities fell within the safe harbor created by 35 U.S.C. 271(e)(1) which provides that "[i]t shall not be an act of infringement to make, use, offer to sell, or sell within the United States or import into the United States a patented invention . . . solely for uses reasonably related to the development and submission of information under a Federal law which regulates the manufacture, use, or sale of drugs or veterinary biological products." Amgen opposed the motion. The Commission investigative attorney ("IA") supported the motion. On July 7, 2006, the ALJ issued an ID (Order No. 6) granting Roche's motion. Amgen filed a petition for review of the ID. Respondents and the IA filed oppositions to the petition for review. Amgen also filed a motion for leave to reply to the oppositions to its petition for review.

Having considered the petition for review, the oppositions thereto, and the relevant portions of the record, the Commission has determined not to review the ID and to deny Amgen's motion for leave.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and section 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.42(h).

By order of the Commission.

Issued: August 31, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–14743 Filed 9–5–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–583]

In the Matter of Certain Wireless Communication Devices, Components Thereof, and Products Containing the Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 31, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Ericsson Inc. of Plano, Texas and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden. The complaint alleges violations of section 337 in the importation into the United States and sale of certain wireless communication devices, components thereof, and products containing the same by reason of infringement of U.S. Patent No. 5,758,295, U.S. Patent No. 5,783,926, U.S. Patent No. 5,864,765, U.S. Patent No. 6,009,319, U.S. Patent No. 6,029,052, U.S. Patent No. 6,198,405, U.S. Patent No. 6,387,027, U.S. Patent No. 6,839,549, and U.S. Patent No. 6,975,686. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2767.

Authority: The authority for institution of this investigation is contained in § 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 30, 2006, *Ordered That*:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless communication devices, components thereof, or products containing the same by reason of infringement of one or more of claims 1–4, 6–8, 10, and 11 of U.S. Patent No. 5,758,295; claims 1–3 of U.S. Patent No. 5,783,926; claims 1, 2, 7, and 8 of U.S. Patent No. 5,864,765; claims 1, 3, 6, 7, 18, and 19 of U.S. Patent No. 6,009,319; claims 1–3, 5, 8, 11, 13, 14, and 18 of U.S. Patent No. 6,029,052; claims 1, 5, 11, and 14 of U.S. Patent No. 6,198,405; claims 10 and 12 of U.S. Patent No. 6,387,027; claims 1, 14, and 20 of U.S. Patent No. 6,839,549; and claim 8 of U.S. Patent No. 6,975,686; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Ericsson Inc., 6300 Legacy Drive, Plano, TX 75024.

Telefonaktiebolaget LM Ericsson, Torshamsgatan 23, Kista, 164 83 Stockholm Sweden.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Telecommunications America LLP, 1301 East Lookout Drive, Richardson, TX 75082.

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, NJ 07660.

Samsung Electronics Co., Ltd., Samsung Main Building, 250, Taepyung-ro 2-ka, Chung-ku, Seoul. 1 00–742 Korea.

(c) The Commission investigative attorney, party to this investigation, is Bryan F. Moore, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 31, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–14742 Filed 9–5–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Notice 1140–0080]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: notification of change of mailing or premise address.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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 71, Number 71, page 24864 on April 27, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 6, 2006. 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:* Notification of Change of Mailing or Premise Address.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit Institutions. Other: Business or other for-profit. Abstract: Licensees and permittees whose mailing address will change must notify the Chief, Federal Explosives Licensing Center, at least 10 days before the change. The information is used by ATF to identify correct locations of explosives licensees/permittees and location of storage of explosive materials for purposes of inspection, as well as to notify permittee/licensees of any change in regulations or laws that may affect their business activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,000 respondents, who will take 10 minutes to respond via letter to the Federal Explosives Licensing Center.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 170 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 30, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–14675 Filed 9–5–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0077]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: report of lost or stolen ATF F 5400.30, intrastate purchase of explosives coupon.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 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 71, Number 81, pages 24862–24863 on April 27, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 6, 2006. 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:* Report of Stolen or Lost ATF F 5400.30, Intrastate Purchase of Explosives Coupon.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.30. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households. Abstract: When any Intrastate Purchase of Explosives Coupon is stolen, lost or destroyed, the person losing possession will, upon discovery of the theft, loss or destruction, immediately, but in all cases before 24 hours have elapsed since discovery, report the matter to the Director, Alcohol, Tobacco Firearms and Explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 800 respondents will complete a 20 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 264 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 30, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6–14676 Filed 9–5–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,552]

Admiral Foundry, Formerly The Admiral Machine Company, Wadsworth, OH; Notice of Negative Determination on Reconsideration

On August 9, 2006, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The Department's Notice of determination was published in the **Federal Register** on August 16, 2006 (71 FR 47249).

The initial investigation revealed that, during the relevant period, the subject firm neither shifted production abroad nor imported cast aluminum tire molds from a foreign country. The investigation also revealed that the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the subject workers' firm. The survey revealed that none of the respondents increased their imports of cast aluminum tire molds during the relevant period.

In the request for reconsideration, the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Region 2–B (the Union) stated that the subject firm produced both molds and casts used on the tire industry and inferred that the scope of the initial investigation was too limited because it only addressed cast aluminum tire molds.

During the reconsideration investigation, the Department sought clarification from the subject firm regarding the article(s) produced at the Wadsworth, Ohio facility during the relevant period. The company official stated that the Wadsworth, Ohio facility produced aluminum tread castings (a component part for tire molds) and did not produce complete tire molds.

On reconsideration, the Department also investigated whether the subject workers are eligible to apply for Trade Adjustment Assistance (TAA) as workers of a secondarily-affected firm (supplied component parts for articles produced by a firm with a currently TAA-certified worker group).

For certification on the basis of the workers' firm being a secondary upstream supplier, the subject firm must have customers with a worker group that is currently TAA-certified, and the subject firm must produce a component part of the product that was the basis for the customers' certification. In addition, either the TAA-certified customer must represent at least twenty percent of the subject firm's business or a loss of business with the TAA-certified customer contributed importantly to the subject workers' separation at the subject firm.

During the reconsideration investigation, the Department determined that none of the subject firm's declining customers are currently certified for TAA based on increased imports of tire molds. Thus the subject firm workers are not eligible under secondary impact.

In order for the Department to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA), the subject worker group must be certified eligible to apply for TAA. Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After review of the application and investigative findings. I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 28th day of August 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–14730 Filed 9–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of August 14 through August 18, 2006.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either-

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA-W-59,823; Ericsson, Inc., Enterprise Div., Brea, CA: July 28, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-59,739; Michael Feldman. Inc., Long Island City, NY: July 17, 2005.

TA-W-59,758; Fulflex of Vermont, Brattleboro, VT: July 19, 2005.

TA-W-59,758A; George C. Moore Co., Edenton, NC: July 19, 2005.

TA-W-59,338; International Paper, Cantonment, FL: May 5, 2005.

TA-W-59,592; Border Apparel Laundry, Ltd., El Paso, TX: June 19, 2005.

TA-W-59,742; United Panel, Inc., Mt. Bethel, PA: July 17, 2005.

TA-W-59,752; Tarkett Wood, Inc., Brookneal, VA: July 12, 2005.

TA-W-59,824; Jim Jam Sportswear, Bethlehem, PA: July 28, 2005.

TA-W-59,757; Bravo Romeo, Inc., Emporia, VA: July 12, 2005.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-59,437; American Specialty Cars, Inc. (ASC), Gibraltar, MI: May 22, 2005.

TA-W-59,646; Aircast, New Providence, NJ: June 24, 2005.

TA-W-59,646A; Aircast, LLC, Summit, NJ: June 24, 2005.

TA-W-59,746; Georgia-Pacific Corporation, Green Bay, WI: August 13, 2006.

TA-W-59,798; Kwikset Corporation, Denison, TX: July 26, 2005.

TA-W-59,815; Suntron Northeast Operations, Lawrence, MA: July 25, 2005.

TA-W-59,832; Rosemount Analytical, Inc., Irvine, CA: August 1, 2005.

TA-W-59,838; Sara Lee Intimates, Statesville, NC: August 1, 2005.

TA-W-59,848; Cooper Tools, Cullman, AL: August 4, 2005.

TA-W-59,868; Global Accessories, Inc., Fremont, OH: August 8, 2005.

TA-W-59,915; Hospira, Ashland, OH: August 16, 2005.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA-W-59,599; Griffco Quality Solutions, St. Louis, MO: June 19, 2005.

TA-W-59,675; Midwest Plastic Components, Inc., St. Louis Park, MN: July 6, 2005.

TA-W-59,737; Collins & Aikman, Nashville, TN: July 17, 2005.

TA-W-59,777; Clarion Technologies, Inc., Greenville, MI: July 5, 2005.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA-W-59,823; Ericsson, Inc., Enterprise Div., Brea, CA.

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Since the workers of the firm are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA-W-59,704; South Park Pleating, Inc., Oakland, CA.

TA–W–59,769; Chapin International, Batavia, NY.

TA–W–59,799; J.D. Phillips Corporation, Alpena, MI.

TA–W–59,860; Project Service, Inc., Park Falls, WI.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,783; Rodman Industries, Marinette, WI

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,545; Getronics Wang Co. LLC, Liberty Lake, WA.

TA–W–59,607; American Truetzschler Inc., Charlotte, NC.

TA–W–59,695; Newell Rubbermaid Home Products, Centerville, IA.

TA–W–59,759; Uniwave, Inc., Farmingdale, NY.

TA–W–59,857; Culpepper Plastics Corporation, Clinton, AR:

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country).

TA–W–59,690; Thomson Micron, LLC, Ronkonkoma, NY.

TA–W–59,865; L.A. Dreyfus Company, Edison, NJ.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–59,664; Federated Logistics and Operations, Milwaukee, OR.

TA–W–59,677; Ray C. Smith, Beulaville, NC.

TA–W–59,729; Sanyo Energy (USA) Corporation, San Diego, CA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the month of August 14 through August 18, 2006. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 28, 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–14728 Filed 9–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,227]

The York Group Metal Casket Assembly Matthews Casket Division, a Subsidiary of Matthews International, Marshfield, MO; Notice of Negative Determination on Reconsideration

On July 12, 2006, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on July 25, 2006 (71 FR 42128).

The Department initially denied Trade Adjustment Assistance to workers of The York Group Metal Casket Assembly, Matthews Casket Division, a subsidiary of Matthews International, Marshfield, Missouri, based on criteria (a)(2)(A)(I.A) and (a)(2)(B)(II.A) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, not being met: A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated. The workers at the subject firm are engaged in employment related to the production of metal caskets.

The petitioner indicated that the Department of Labor did not consider the loss of wages and hours of the worker group in the initial investigation. The petitioner also indicated that the Department should request the Affirmative Action Plan for 2004, 2005, and 2006, thus far, from the company for the subject firm, specifying weekly production numbers and weekly hours. The petitioner believes this Plan will reveal that five percent of the workforce was affected by layoffs and decreased hours.

The Department, upon the request of the petitioner, acquired additional information as it pertains to workers' hours and wages during the relevant period. That data was not requested during the initial investigation. The Department also revisited the subject firm's employment numbers for the relevant period. The additional data obtained from the company revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974.

The petitioner's statement regarding loss of hours and wages does not meet the definition of partial separations, defined as the worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours at the firm or appropriate subdivision thereof, and the worker's wages have been reduced to 80 percent or less of the worker's average weekly wage at the firm or appropriate subdivisions thereof, as set forth by the trade regulations.

The company official provided information showing that the average wage rate, not considering average overtime, has increased during the relevant period. Additionally, as it pertains to hours, no workers were placed on a reduced, less than 40 hours per week for more than two consecutive weeks, work schedule during the relevant period. Furthermore, employment as the subject firm still revealed an insignificant percentage of separations, as defined by the criteria (a)(2)(A)(I.A) and (a)(2)(B)(II.A), during the scope of the initial investigation; therefore, the group eligibility requirement was not met. If conditions change, the petitioners may reapply for Trade Adjustment Assistance group eligibility.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of The York Group Metal Casket Assembly, Matthews Casket Division, a subsidiary of Matthews International, Marshfield, Missouri.

Signed at Washington, DC this 28th day of August 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–14725 Filed 9–5–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a)

of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 18, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 18, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of August 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 8/21/06 and 8/25/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59927	Toshiba (State)	Irvine, CA	08/21/06	08/18/06
59928	Diversco, Inc. (Wkrs)	Spartanburg, SC	08/21/06	08/16/06
59929	Cochrane Furniture Company (Comp)	Lincolnton, NC	08/21/06	08/18/06
59930	Shaw Mudge and Company (State)	Shelton, CT	08/21/06	08/18/06
59931	Flex-o-Lite, Inc. (Comp)	Paris, TX	08/21/06	08/15/06
59932	Dun and Bradstreet (Wkrs)	Bethlehem, PA	08/21/06	08/15/06
59933	Reliable Knitting Works (Comp)	Milwaukee, WI	08/21/06	08/19/06
59934	Florida Tile, Inc. (Comp)	Shannon, GA	08/21/06	08/21/06
59935	Moll Industries (State)	Tucson, AZ	08/21/06	08/18/06
59936	C-Tech Industries, Inc. (Comp)	Calumet, MI	08/22/06	08/15/06
59937	Stronglite, Inc. (Comp)	Cottage Grove, OR	08/22/06	08/21/06
59938	Lear Corporation (Union)	Atlanta, GA	08/22/06	08/22/06
59939	Newco, Inc. (Wkrs)	Newton, NJ	08/22/06	08/11/06
59940	Liberty Throwing Co., Inc. (Union)	Kingston, PA	08/22/06	08/22/06
59941	Caraustar Mill Group (USW)	Rittman, OH	08/23/06	08/17/06
59942	Distinctive Designs Furniture USA (State)	Granite Falls, NC	08/23/06	08/22/06
59943	Lee's Shipping (Wkrs)	Thayer, MO	08/23/06	08/22/06
59944	US Airways, Inc. (Wkrs)	Winston-Salem, NC	08/23/06	08/21/06
59945	Sheaffer Manufacturing Co., LLC (Comp)	Fort Madison, IA	08/23/06	08/23/06
59946	International Textile Group (Comp)	New York, NY	08/23/06	08/16/06
59947	Hamrick's, Inc. (Comp)	Gaffney, SC	08/24/06	08/01/06
59948	Dolphin Cove, LLC (Comp)	Soddy Daisy, TN	08/24/06	08/23/06
59949	Thermo Electron (State)	Franklin, MA	08/24/06	08/23/06
59950	Stanley-Bostitch, Inc. (State)	Clinton, CT	08/24/06	08/23/06
59951	Northern Hardwoods (State)	South Range, MI	08/24/06	08/16/06
59952	Schott North America, Inc. (Comp)	Duryea, PA	08/25/06	08/17/06
59953	Corinthian, Inc. (Wkrs)	Corinth, MS	08/25/06	08/24/06
59954	Saturn Customer Assistance Ctr. (Wkrs)	Springhill, TN	08/25/06	08/24/06
59955	Lawrence Hardware, LLC (Comp)	Rock Falls, IL	08/25/06	08/23/06
59956	International Textile Group (Comp)	Greensboro, NC	08/25/06	08/16/06
59957	Jonette Jewelry Co. (Comp)	E. Providence, RI	08/25/06	08/25/06
59958	Stanley Fastening Systems, LP (Comp)	East Greenwich, RI	08/25/06	08/24/06
59959	Toombs Apparel, Inc. (Comp)	Lyons, GA	08/25/06	08/22/06

[FR Doc. E6–14729 Filed 9–5–06; 8:45 am]
BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Publication of the Draft Environmental Impact Statement (DEIS) for the Advanced Technology Solar Telescope (ATST) at the Haleakalā High Altitude Observatory (HO) Site, Haleakalā, Island of Maui, Hawai'i

AGENCY: National Science Foundation.

ACTION: Notice—Draft Environmental Impact Statement.

SUMMARY: The National Science Foundation (NSF) has prepared a Draft Environmental Impact Statement (DEIS) for the proposed Advanced Technology Solar Telescope (ATST) Project. This joint DEIS is prepared in compliance with the Federal National Environmental Policy Act (NEPA) and the State of Hawai'i Chapter 343, Hawai'i Revised Statutes (HRS). The NSF, through an award to the National Solar Observatory (NSO), plans to fund construction of the proposed ATST at the University of Hawai'i Institute for Astronomy (IfA), Haleakalā High Altitude Observatory (HO) site, on the Island of Maui, Hawai'i. An extensive campaign of worldwide site testing has identified Haleakalā Observatory as the optimal location for this next-generation solar observing facility. The telescope enclosure and a support facility would be placed at one of two identified sites within the existing observatory boundaries. The DEIS addresses the

multi-year selection process of these sites and the potential environmental impacts of on-site construction, installation, and operation of this proposed new solar telescope. With its unprecedented 4.2-m (165-inch) aperture, advanced optical technology, and state-of-the-art instrumentation, the proposed ATST would be an indispensable tool for exploring and understanding physical processes on the sun that ultimately affect Earth. The DEIS addresses, among other things, the potential direct, indirect, and cumulative environmental impacts associated with the proposed Advanced Technology Solar Telescope project.

Written comments may be forwarded to:

ADDRESSES: Dr. Craig B. Foltz, Program Manager, National Science Foundation, Division of Astronomical Sciences, 4201 Wilson Blvd., Room 1045, Washington DC 22230, telephone: (703) 292–4909, fax: (730) 292–9034, e-mail: *cfoltz@nsf.gov*.

SUPPLEMENTARY INFORMATION:

Proposed alternatives to be considered include, but are not limited to the following:

(1) *Alternative 1 (Proposed Action):* Undeveloped site East of Mees Observatory.

(2) *Alternative 2*: Former radio telescope site known as Reber Circle.

(3) *Alternative 3:* No-Action. The National Science Foundation will not construct the Advanced Technology Solar Telescope on Maui.

Publication of the DEIS does not foreclose consideration of any courses of action or possible decisions addressed by the National Science Foundation in its Final Environmental Impact Statement (FEIS). No final decisions will be made regarding construction of the ATST prior to completion and signature of the Record of Decision for the Proposed Action.

Public Comment Period: The NSF welcomes and invites Federal, State, and local agencies, and the public to participate in the 45-day comment period for the completion of this EIS. The 45-day public comment period begins September 8, 2006, and ends on October 23, 2006. Public comment meetings will take place on the island of Maui, Hawai'i, with notification of the times and locations published in the local newspapers, as follows:

1. Cameron Center Auditorium, September 27, 2006, Wednesday, 6 p.m. to 10 p.m.

2. Hannibal Tavares Community Center, Multi-purpose Room, September 28, 2006, Thursday, 6 p.m. to 10 p.m.

3. Kula Community Center, September 29, 2006, Friday, 6 p.m. to 10 p.m.

Written comments may be submitted to Dr. Craig B. Foltz at the address above.

Dated: August 23, 2006.

Craig B. Foltz,

ATST Program Officer.

[FR Doc. 06–7429 Filed 9–5–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–128; EA–06–211]

In the Matter of Texas A&M University (Nuclear Science Center TRIGA Research Reactor); Order Modifying Amended Facility Operating License No. R–83

I

The Texas A&M University (the licensee) is the holder of Amended Facility Operating License No. R–83 (the license). The license was issued on December 7, 1961, by the U.S. Atomic Energy Commission and subsequently renewed on March 30, 1983, by the U.S. Nuclear Regulatory Commission (the NRC or the Commission). The license includes authorization to operate the Nuclear Science Center TRIGA Research Reactor (the facility) at a power level up to 1,000 kilowatts thermal (1,300 kilowatts thermal for purposes of testing and calibration) and to receive, possess, and use special nuclear material associated with the operation. The facility is on the campus of the Texas A&M University, in the city of College Station, Brazos County, Texas. The mailing address is Nuclear Science Center, Texas Engineering Experimental Station, Texas A&M University, 3575 TAMU, College Station, Texas 77843–3575.

II

On February 25, 1986, the Commission promulgated a final rule, Title 10 of the Code of Federal Regulations (10 CFR) Section 50.64, limiting the use of high-enriched uranium (HEU) fuel in domestic non-power reactors (research and test reactors) (see 51 FR 6514). The regulation, which became effective on March 27, 1986, requires that if Federal Government funding for conversion-related costs is available, each licensee of a non-power reactor authorized to use HEU fuel shall replace it with low-enriched uranium (LEU) fuel acceptable to the Commission unless the Commission has determined that the reactor has a unique purpose. The Commission's stated purpose for these requirements was to reduce, to the maximum extent possible, the use of HEU fuel in order to reduce the risk of theft and diversion of HEU fuel used in non-power reactors.

Paragraphs 50.64(b)(2)(i) and (ii) require that a licensee of a non-power reactor (1) not acquire more HEU fuel if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes to acquire HEU fuel and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Paragraph 50.64(c)(2)(i) requires, among other things, that each licensee of a non-power reactor authorized to possess and to use HEU fuel develop and submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals, thereafter, a written proposal for meeting the requirements of the rule. The licensee shall include in its proposal a certification that Federal Government funding for conversion is available through the U.S. Department of Energy or other appropriate Federal agency and a schedule for conversion, based upon availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Paragraph 50.64(c)(2)(iii) requires the licensee to include in the proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to licensee procedures. This paragraph also requires the licensee to submit supporting safety analyses in time to meet the conversion schedule.

Paragraph 50.64(c)(2)(iii) also requires the Director to review the licensee proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protection of public health and safety, any necessary changes to the license, the facility, and licensee procedures. In the **Federal Register** notice of the final rule (51 FR 6514), the Commission explained that in most, if

not all, cases, the enforcement order would be an order to modify the license under 10 CFR 2.204 (now 10 CFR 2.202).

Section 2.309 states the requirements for a person whose interest may be affected by any proceeding to initiate a hearing or to participate as a party.

III

On December 29, 2005, as supplemented on July 17, and August 4 and 21, 2006, the NRC staff received the licensee's conversion proposal, including its proposed modifications and supporting safety analyses. HEU fuel elements are to be replaced with LEU fuel elements. The reactor core contains fuel bundles, each fuel bundle contains up to four fuel elements of the TRIGA design, with the fuel consisting of uranium-zirconium hydride with 30 weight percent uranium. These fuel elements contain the uranium-235 isotope at an enrichment of less than 20 percent. The NRC staff reviewed the licensee's proposal and the requirements of 10 CFR 50.64 and has determined that public health and safety and common defense and security require the licensee to convert the facility from the use of HEU to LEU fuel in accordance with the attachments to this Order and the schedule included herein. The attachments to this Order specify the changes to the License Conditions and Technical Specifications that are needed to amend the facility license and contains an outline of a reactor startup report to be submitted to NRC within six months following completion of LEU fuel loading.

IV

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, *it is hereby ordered that:*

Amended Facility Operating License No. R–83 is modified by amending the License Conditions and Technical Specifications as stated in the attachments to this Order. The Order become effective on the later date of either (1) the day the licensee receives an adequate number and type of LEU fuel elements to operate the facility as specified in the licensee's proposal, or (2) 20 days after the date of publication of this Order in the **Federal Register**.

V

Pursuant to the Atomic Energy Act of 1954, as amended any person adversely affected by this Order may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Any answer or request for a hearing shall set forth the matters of fact and law on which the licensee, or other person adversely affected, relies and the reasons why the Order should not have been issued. Any answer or request for a hearing shall be filed (1) by first class mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) by courier, express mail, and expedited delivery services to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in delivery of mail to the United States Government Offices, it is requested that answers and/or requests for hearing be transmitted to the Secretary of the Commission either by e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or by facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101 (the verification number is 301–415–1966). Copies of the request for hearing must also be sent to the Director, Office of Nuclear Reactor Regulation and to the Assistant General Counsel for Materials Litigation and Enforcement, Office of the General Counsel, with both copies addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and the NRC requests that a copy also be transmitted either by facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.*

If a person requests a hearing, he or she shall set forth in the request for a hearing with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In accordance with 10 CFR 51.10(d) this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to environmental impacts associated with the changes imposed by this Order as described in the safety evaluation, the changes would, if imposed by other than an Order, meet the definition of a categorical exclusion in accordance with 10 CFR 51.22(c)(9). Thus, pursuant to either 10 CFR 51.10(d) or 51.22(c)(9), no environmental assessment nor environmental impact statement is required.

For further information see the application from the licensee dated December 29, 2005 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML062200390), as supplemented on July 17, and August 4 and 21, 2006 (ADAMS Accession Nos. ML062220189, ML062220278 and ML062410495), the staff's request for additional information dated June 1, 2006 (ADAMS Accession No. ML061500125), and the cover letter to the licensee, attachments to the Order, and the staff's safety evaluation dated September 1, 2006 (ADAMS Accession No. ML062410474), available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated this 1st day of September 2006.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E6–14824 Filed 9–5–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–83; EA–06–210]

In the Matter of University of Florida (University of Florida Training Reactor); Order Modifying Amended Facility Operating License No. R–56

I

The University of Florida (the licensee) is the holder of Amended Facility Operating License No. R–56 (the license) issued on May 21, 1959, by the U.S. Atomic Energy Commission, and subsequently renewed on August 30, 1982, by the U.S. Nuclear Regulatory Commission (the NRC or the Commission). The license authorizes operation of the University of Florida Training Reactor (the facility) at a power

level up to 100 kilowatts thermal. The facility is a research reactor located on the campus of the University of Florida, in the city of Gainesville, Alachua County, Florida. The mailing address is Department of Nuclear and Radiological Engineering, 202 Nuclear Sciences Center, P.O. Box 118300, Gainesville, Florida 32611–8300.

II

On February 25, 1986, the Commission promulgated a final rule, Title 10 of the Code of Federal Regulations (10 CFR) section 50.64, limiting the use of high-enriched uranium (HEU) fuel in domestic non-power reactors (research and test reactors) (see 51 FR 6514). The regulation, which became effective on March 27, 1986, requires that if Federal Government funding for conversion-related costs is available, each licensee of a non-power reactor authorized to use HEU fuel shall replace it with low-enriched uranium (LEU) fuel acceptable to the Commission unless the Commission has determined that the reactor has a unique purpose. The Commission's stated purpose for these requirements was to reduce, to the maximum extent possible, the use of HEU fuel in order to reduce the risk of theft and diversion of HEU fuel used in non-power reactors.

Paragraphs 50.64(b)(2)(i) and (ii) require that a licensee of a non-power reactor (1) not acquire more HEU fuel if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes to acquire HEU fuel and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Paragraph 50.64(c)(2)(i) requires, among other things, that each licensee of a non-power reactor authorized to possess and to use HEU fuel develop and submit to the Director of the Office of Nuclear Reactor Regulation (Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal for meeting the requirements of the rule. The licensee shall include in its proposal a certification that Federal Government funding for conversion is available through the U.S. Department of Energy or other appropriate Federal agency and a schedule for conversion, based upon availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Paragraph 50.64(c)(2)(iii) requires the licensee to include in the proposal, to the extent required to effect conversion, all necessary changes to the license, to the facility, and to licensee procedures. This paragraph also requires the licensee to submit supporting safety analyses in time to meet the conversion schedule.

Paragraph 50.64(c)(2)(iii) also requires the Director to review the licensee proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with protection of public health and safety, any necessary changes to the license, the facility, and licensee procedures. In the **Federal Register** notice of the final rule (51 FR 6514), the Commission explained that in most, if not all, cases, the enforcement order would be an order to modify the license under 10 CFR 2.204 (now 10 CFR 2.202).

Section 2.309 states the requirements for a person whose interest may be affected by any proceeding to initiate a hearing or to participate as a party.

III

On December 2, 2005, as supplemented on June 19 and 29, July 20 and 21, and August 4 and 22, 2006, the NRC staff received the licensee's conversion proposal, including its proposed modifications and supporting safety analyses. HEU fuel elements are to be replaced with LEU fuel elements. The fuel elements contain fuel plates, typical of the materials test reactor design, with the fuel consisting of uranium silicide dispersed in an aluminum matrix. These plates contain the uranium-235 isotope at an enrichment of less than 20 percent. The NRC staff reviewed the licensee's proposal and the requirements of 10 CFR 50.64 and has determined that public health and safety and common defense and security require the licensee to convert the facility from the use of HEU to LEU fuel in accordance with the attachments to this Order and the schedule included herein. The attachments to this Order specify the changes to the License Conditions, Technical Specifications and Emergency Plan that are needed to amend the facility license and contains an outline of a reactor startup report to be submitted to NRC within six months following completion of LEU fuel loading.

IV

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, *it is hereby ordered that:*

Amended Facility Operating License No. R–56 is modified by amending the License Conditions, Technical Specifications and Emergency Plan as stated in the attachments to this Order. License Condition 2.B.(2), allowing possession of LEU fuel, becomes effective 20 days after the date of publication of this Order in the **Federal Register**. All other changes become effective on the later date of either (1) the day the licensee receives an adequate number and type of LEU fuel elements to operate the facility as specified in the licensee proposal, or (2) 20 days after the date of publication of this Order in the **Federal Register**.

V

Pursuant to the Atomic Energy Act of 1954, as amended, any person adversely affected by this Order may submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Any answer or request for a hearing shall set forth the matters of fact and law on which the person adversely affected, relies and the reasons why the Order should not have been issued. Any answer or request for a hearing shall be filed (1) by first class mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) by courier, express mail, and expedited delivery services to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in delivery of mail to the United States Government Offices, it is requested that answers and/or requests for hearing be transmitted to the Secretary of the Commission either by e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or by facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101 (the verification number is 301–415–1966). Copies of the request for hearing must also be sent to the Director, Office of Nuclear Reactor Regulation and to the

Assistant General Counsel for Materials Litigation and Enforcement, Office of the General Counsel, with both copies addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and the NRC requests that a copy also be transmitted either by facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*.

If a person requests a hearing, he or she shall set forth in the request for a hearing with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by a person whose interest is adversely affected, the Commission shall issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In accordance with 10 CFR 51.10(d) this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to environmental impacts associated with the changes imposed by this Order as described in the safety evaluation, the changes would, if imposed by other than an Order, meet the definition of a categorical exclusion in accordance with 10 CFR 51.22(c)(9) and (10). Thus, pursuant to either 10 CFR 51.10(d) or 51.22(c)(9) and (10), no environmental assessment nor environmental impact statement is required.

For further information see the application from the licensee dated December 2, 2005 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML062220375), as supplemented on June 19 (ADAMS Accession Nos. ML061720498 and ML062220178) and 29 (ADAMS Accession No. ML061840285), July 20 (ADAMS Accession No. ML062050252) and 21 (ADAMS Accession No. ML062060139), and August 4 (ADAMS Accession No. ML062350107) and 22 (ADAMS Accession No. ML062400265), 2006, the staff's requests for additional information dated May 2 (ADAMS Accession No. ML061220262 with clarification dated May 18, 2006, ADAMS Accession No. ML061420119) and 22, 2006 (ADAMS Accession No. ML061380167), and the cover letter to the licensee, attachments to this Order and staff's safety evaluation dated September 1, 2006 (ADAMS Accession No. ML062440086) available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated this 1st day of September 2006.

For the Nuclear Regulatory Commission.

J. E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E6–14825 Filed 9–5–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–1162]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Western Nuclear, Inc., Jeffrey City, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Stephen J. Cohen, Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–7182; fax number: (301) 415–5955; e-mail: *sjc7@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) plans to issue a license amendment to Source Materials License No. SUA–56 held by Western Nuclear, Inc. (the Licensee), to authorize the establishment of alternate concentration limits (ACLs) at its Split Rock uranium mill tailings site in Jeffrey City, Wyoming. The NRC has prepared an Environmental Assessment (EA) in support of the proposed action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact is appropriate. Final action on the Licensee's amendment request will be taken following publication of this notice. The NRC will issue a technical evaluation report addressing the safety aspects of establishing ACLs at the Licensee's facility.

II. EA Summary

The purpose of the proposed amendment is to authorize the establishment of ACLs instead of ground water protection standards for six constituents at the Licensee's Jeffrey City, Wyoming, facility. Specifically, this amendment will establish ACLs for ammonia, manganese, molybdenum, nitrate, radium-226 and -228, and natural uranium. This amendment will also require the Licensee to establish institutional controls on all properties within the long-term surveillance boundary to preclude domestic ground water use. On October 29, 1999, the Licensee requested that NRC approve the proposed amendment.

The staff has prepared the EA in support of the proposed license amendment. The staff considered impacts to ground water, surface water, land use, ecology, socioeconomic conditions, and historical and cultural resources. Impacts to ground water are mitigated by the use of institutional controls that prevent human consumption of contaminated ground water within the long-term surveillance boundary. However, agricultural and livestock uses have been preserved within the long-term surveillance boundary. A surface water and ground water monitoring program has been established to track ground water contamination, and trigger levels for surface water and ground water have been established, the exceedance of which would require a response from the Licensee.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment, the EA, and other supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document	ADAMS Accession No.
Ground Water Characterization and Evaluation.	ML003672396, ML003672400
Baseline Risk Assessment, Appendix I to Site Closure Plan.	ML003672619
Supplement to October 29, 1999, Split Rock Site Closure Report.	ML010380246
WNI Response to NRC Request of September 6, 2001, for Additional Information on Site Closure Plan for the Split Rock, Wyoming, Site.	ML021710273
Supplemental Data Collection, Program Trip Report.	ML021710422
WNI Response to NRC Request of September 6, 2001, for Additional Information on Site Closure Plan for the Split Rock, Wyoming, Site.	ML022110059
Supplemental Ground Water Modeling Report.	ML030760336
Letter to Robert A. Nelson Regarding Risk Assessment of Ground Water for Agricultural Uses.	ML041490156
Response to Request for Additional Information.	ML050690064
Environmental Assessment for Amendment to Source Materials License SUA–56, Ground Water Alternate Concentration Limits.	ML062130316

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 30th day of August 2006.

For the Nuclear Regulatory Commission.

Stephen J. Cohen,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–14706 Filed 9–5–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of September 4, 11, 18, 25, October 2, 9, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 4, 2006

Wednesday, September 6, 2006

1:50 p.m.

Affirmation Session (Public) (Tentative).

a. Pacific Gas & Elec. Co. (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI "Motion by San Luis Obispo Mothers for Peace, Sierra Club, and Peg Pinard for Declaratory and Injunctive Relief with respect to Diablo Canyon ISFSI". (Tentative.)

b. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station) Docket No. 50–0219, Legal challenges to LBP–06–07 and LBP–06–11. (Tentative.)

c. Pa'ina Hawaii, LLC, LBP–06–4, 63 NRC 99 (2006) and LBP–06–12, 63 NRC 409 (2006). (Tentative.)

Week of September 11, 2006—Tentative

Monday, September 11, 2006

9:30 a.m.

Discussion of Security Issues (Closed—Ex. 1).

1:30 p.m.

Discussion of Security Issues (Closed—Ex. 1 & 3).

Tuesday, September 12, 2006

9:30 a.m.

Meeting with Organization of Agreement States (OAS) and conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Shawn Smith, 301–415–2620.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

1 p.m.

(Discussion of Security Issues (Closed—Ex. 1).

Week of September 18, 2006—Tentative

There are no meetings scheduled for the Week of September 18, 2006.

Week of September 25, 2006—Tentative

There are no meetings scheduled for the Week of September 25, 2006.

Week of October 2, 2006—Tentative

There are no meetings scheduled for the Week of October 2, 2006.

Week of October 9, 2006—Tentative

There are no meetings scheduled for the Week of October 9, 2006.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov*.Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: August 31, 2006.

R. Michelle Schroll,

Office of the Secretary

[FR Doc. 06–7479 Filed 9–1–06; 9:46am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293–LR; ASLBP No. 06–848–02–LR]

Entergy Nuclear Operations, Inc. (Pilgrim Nuclear Power Station); Notice of Reconstitution

Pursuant to 10 CFR 2.321, the Atomic Safety and Licensing Board in the above captioned *Entergy Nuclear Operations, Inc.* proceeding, is hereby reconstituted by appointing Administrative Judge Paul B. Abramson in place of Administrative Judge Nicholas G. Trikouros who, pursuant to 10 CFR 2.313(b)(1), recused himself from the proceeding on August 30, 2006.

In accordance with 10 CFR 2.302, henceforth all correspondence,

documents, and other material relating to any matter in this proceeding over which this Licensing Board has jurisdiction should be served on Administrative Judge Abramson as follows:

Administrative Judge Paul B. Abramson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 30th day of August 2006.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E6–14700 Filed 9–5–06; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIME AND DATES: 4 p.m., Monday, September 11, 2006; 9:30 a.m. and 4 p.m. Tuesday, September 12, 2006; 8 a.m. Wednesday, September 13, 2006.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: September 11–4 p.m. (Closed); September 12–9:30 a.m. (Closed); September 12–4 p.m. (Open); September 13–8 a.m. (Closed)

MATTERS TO BE CONSIDERED:

Monday, September 11, at 4 p.m. (Closed)

1. Financial Update.
2. Report on Goals and Performance Assessment for Fiscal Year 2007.
3. Fiscal Year 2007 Integrated Financial Plan Briefing.
4. Rate Case Update.
5. International Products, Services and Rates.
6. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2006–6, Extension of Capital One Services, Inc., Negotiated Service Agreement.
7. Strategic Planning.
8. Personnel Matters and Compensation Issues.
9. Labor Negotiations Planning.
10. Office of Inspector General Fiscal Year 2007 Budget.

Tuesday, September 12, at 9:30 a.m. (Closed)

1. Continuation of Monday's closed session agenda.

Tuesday, September 12, at 4 p.m. (Open)

1. Minutes of the Previous Meetings, May 2–3, June 6, and July 12, 2006.
2. Remarks of the Postmaster General and CEO Jack Potter.
3. Committee Reports and Committee Charters.
4. Board of Governors Calendar Year 2007 Meeting Schedule.
5. Office of the Governors Fiscal Year 2007 Budget.
6. Postal Rate Commission Fiscal Year 2007 Budget.
7. Financial Update.
8. Fiscal Year 2007 Operating, Capital and Financing Plans.
9. Preliminary Fiscal Year 2008 Appropriation Request.
10. Fiscal Year 2007 Annual Performance Plan—Government Performance and Results Act.
11. Capital Investments.
    a. Automated Package Processing Systems (APPS) Phase 2.
    b. Phoenix, Arizona—Purchase Existing Building.
12. Tentative Agenda for the November 14–15, 2006, meeting in Washington, DC.

Wednesday, September 13 at 8 a.m. (Closed)—(If needed)

1. Continuation of Tuesday's closed session agenda.

FOR FURTHER INFORMATION CONTACT: Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Wendy A. Hocking,

Secretary.

[FR Doc. 06–7477 Filed 8–31–06; 4:27pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 20a–1; SEC File No. 270–132; OMB Control No. 3235–0158.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below. The title of the collection of information is "Rule 20a–1 under the Investment Company Act of 1940, Solicitation of Proxies, Consents and Authorizations."

Rule 20a–1 (17 CFR 270.20a–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) requires that the solicitation of a proxy, consent, or authorization with respect to a security issued by a registered investment company ("fund") be in compliance with Regulation 14A (17 CFR 240.14a–1 *et seq.*), Schedule 14A (17 CFR 240.14a–101), and all other rules and regulations adopted under section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)). It also requires a fund's investment adviser, or a prospective adviser, to transmit to the person making a proxy solicitation the information necessary to enable that person to comply with the rules and regulations applicable to the solicitation.

Regulation 14A and Schedule 14A establish the disclosure requirements applicable to the solicitation of proxies, consents and authorizations. In particular, Item 22 of Schedule 14A contains extensive disclosure requirements for fund proxy statements. Among other things, it requires the disclosure of information about fund fee or expense increases, the election of directors, the approval of an investment advisory contract and the approval of a distribution plan.

The Commission requires the dissemination of this information to assist investors in understanding their fund investments and the choices they may be asked to make regarding fund operations. The Commission does not use the information in proxies directly, but reviews proxy statement filings for compliance with applicable rules.

It is estimated that funds file approximately 1,565 proxy solicitations annually with the Commission. That figure includes multiple filings by some funds. The total annual reporting and recordkeeping burden of the collection of information is estimated to be approximately 166,203 hours (1,565 responses × 106.2 hours per response).

Rule 20a–1 does not involve any recordkeeping requirements. Providing the information required by the rule is mandatory and information provided under the rule will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or via e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or via e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 30, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–14697 Filed 9–5–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27472; 812–13154]

AdvisorOne Funds and Dunham & Associates Investment Counsel, Inc.; Notice of Application

August 29, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: AdvisorOne Funds (the "Trust") and Dunham & Associates Investment Counsel, Inc. (the "Manager").

Filing Dates: The application was filed on November 24, 2004, and amended on May 31, 2005, February 7, 2006, and August 9, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5.30 p.m. on September 25, 2006, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Thomas R. Westle, Esq., Blank Rome LLP, 405 Lexington Avenue, 23rd Floor, New York, NY 10174.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust currently has sixteen series, eleven of which are advised by the Manager (the "Dunham Funds").[1] The Manager, a California corporation, serves as the investment adviser to the Dunham Funds and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

2. The Manager serves as investment adviser to the Dunham Funds pursuant to an investment advisory agreement that was approved by the board of trustees of the Trust (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Manager ("Independent Trustees"), and the shareholders of each Dunham Fund. The Advisory Agreement permits the Manager to enter into investment advisory agreements ("Sub-Advisory Agreements") with sub-advisers ("Sub-Advisers") to whom the Manager may delegate responsibility for providing investment advice and making investment decisions for the Dunham Funds. The Manager monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, termination, and replacement. The Manager uses a number of factors discussed in the application to evaluate potential Sub-Advisers' skills in managing assets pursuant to particular investment objectives.

3. Each of the Dunham Funds currently has a single Sub-Adviser, although any Series may employ multiple Sub-Advisers in the future. Each Sub-Adviser is, and any future Sub-Adviser will be, registered as an investment adviser under the Advisers Act. Each Sub-Adviser has discretionary authority to invest all (or the portion assigned to it) of the assets of a particular Series, subject to general supervision by the Manager and the Board. For services rendered under a Sub-Advisory Agreement, each Sub-Adviser will receive a fee from the respective Series, negotiated by the Manager and the Series. Such fees will be negotiated with respect to each Series either at a flat annual rate or on a fulcrum fee basis, which may vary based upon the performance of the Series.

4. Applicants request an order to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. Shareholders of a Series will approve any change to a Sub-Advisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Series that have been approved by the shareholders of the Series. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Series or the Manager (an "Affiliated Sub-Adviser"), other than by reason of serving as a Sub-Adviser of one or more of the Series. None of the current Sub-Advisers is an Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment

[1] Applicants also request relief with respect to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Are advised by the Manager or an entity controlling, controlled by, or under common control with the Manager; (b) use the management structure described in the application; and (c) comply with the terms and conditions in the application (collectively with the Dunham Funds, the "Series"). The Dunham Funds are the only existing Series that currently intend to rely on the requested order. If the name of any Series contains the name of a Sub-Adviser (as defined below), the name of the Manager (or the name of the entity controlling, controlled by, or under common control with the Manager that serves as the primary adviser to the Series) will precede the name of the Sub-Adviser.

adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. Applicants state that the Series' shareholders rely on the Manager to select the Sub-Advisers best suited to achieve a Series' investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants contend that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Series, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants also note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Series may rely on the order requested in the application, the operation of the Series in the manner described in the application will be approved by a majority of the Series' outstanding voting securities, as defined in the Act, or, in the case of a Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before offering shares of the Series to the public.

2. Each Series relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. In addition, each Series will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Sub-Adviser, the Manager will furnish shareholders of the affected Series all information about the new Sub-Adviser that would be included in a proxy statement. To meet this obligation, the Manager will provide shareholders of the applicable Series with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the Series.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

6. When a Sub-Adviser change is proposed for a Series with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such a change is in the best interests of the Series and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general management services to each Series, including overall supervisory responsibility for the general management and investment of the Series' assets and, subject to review and approval of the Board, will (i) set the Series' overall investment strategies; (ii) evaluate, select, and recommend Sub-Advisers to manage all or part of a Series' assets; (iii) when appropriate, allocate and reallocate a Series' assets among multiple Sub-Advisers; (iv) monitor and evaluate the performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with each Series' investment objective, policies, and restrictions.

8. Shareholders of a Series will approve any change to a Sub-Advisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Series that have been approved by the shareholders of the Series.

9. No trustee or officer of the Trust, or director or officer of the Manager, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser, except for (a) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

10. The requested order will expire on the effective date of Rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–14696 Filed 9–5–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Number IC–27471; File No. 812–13236]

Principal Life Insurance Company; et al., Notice of Application

August 29, 2006.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order pursuant to section 11(a) of the Investment Company Act of 1940, as amended (the "Act"), approving the terms of a proposed offer of exchange.

APPLICANTS: Principal Life Insurance Company ("Principal" or the "Company"); Principal Life Insurance Company Variable Life Separate Account (the "Account"); and Princor Financial Services Corporation ("Princor") (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants request an order approving the terms of a proposed offer of exchange of new flexible variable universal life insurance policies issued by Principal and participating in the Account (the "New Policies") for certain outstanding flexible variable universal life insurance policies issued by Principal and participating in the Account (the "Old Policies") (collectively with the New Policies, the "Policies").

FILING DATE: The application was filed on September 23, 2005, and amended on July 31, 2006, and August 29, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September, 25, 2006, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary: Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: c/o John W. Blouch, Esq., Dykema Gossett PLLC, Franklin Square Building, 1300 I Street, NW., Suite 300 West, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Joyce M. Pickholz, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch, SEC's Public Reference Branch, 100 F Street, NE., Room 1580, Washington, DC 20549 (telephone (202) 551–8090).

Applicants' Representations

1. Principal is a stock life insurance company and is a wholly-owned subsidiary of Principal Financial Group, Inc. organized under the laws of Iowa in 1879. It is authorized to transact life insurance and annuity business in 50 states and the District of Columbia.

2. The Account was established on November 2, 1987, pursuant to a resolution of the Executive Committee of Principal's board of directors. The Account is organized and registered under the Act as a unit investment trust (File No. 811–5118).

3. Princor, the principal underwriter for the Policies and for certain other variable insurance policies and mutual funds sponsored by Principal, is a wholly-owned subsidiary of Principal Financial Group, Inc. Princor is registered with the Commission as a broker-dealer and is a member of NASD, Inc.

4. The New Policies are offered pursuant to a registration statement filed on January 30, 2002, under the Securities Act of 1933 (the "'33 Act"), and effective on May 28, 2002 (File No. 333–81714).

5. The New Policies are flexible premium variable universal life insurance policies that permit the accumulation of policy values on a variable, fixed or combination of variable and fixed basis. The New Policies allow for unscheduled premium payments or the establishment of a premium payment schedule. The New Policies terminate when the death proceeds are paid, when the maturity proceeds are paid, or when a policy is surrendered. The New Policy also terminates at the expiration of a 61-day grace period following a date when notice is given that the net policy value is less than the monthly policy charge. The New Policy matures at the insured's attained age of 100. On that date, if the insured is living, the Policy is in force and the insured does not want the maturity date extended, Principal will pay maturity proceeds equal to the net surrender value. The minimum face amount of a New Policy is $100,000.

6. Policy values of the New Policies may be allocated to the Subaccounts of the Account that currently invest in 71 different investment company portfolios ("Underlying Funds"). Amounts invested in the Underlying Funds are subject to the management, administration and distribution fees paid and other expenses incurred by the Underlying Funds. Policy values may also be accumulated on a guaranteed basis by allocation to Principal's general account (the "Fixed Account"). Fixed account interest is guaranteed to be credited at a rate of at least 3% compounded annually.

7. The New Policy provides that after the initial allocation of premiums, the owner may transfer amounts among the subaccounts of the Account ("Subaccounts") or the Fixed Account subject to the following restrictions. The owner may not make both a scheduled fixed account transfer and an unscheduled fixed account transfer in the same policy year where the transfer is from the Fixed Account. One unscheduled transfer from the Fixed Account may be made during the first 30-day period of each calendar quarter.

8. Unscheduled transfers including transfers not involving the Fixed Account are otherwise allowed, subject to a fee of up to $25 for each unscheduled transfer after the first unscheduled transfer in a policy month. Scheduled transfers from one Subaccount to another Subaccount are allowed at no charge. The Company reserves the right to reject a transfer if the transfer would disrupt the management of the Underlying Funds or the Account.

9. Policy values under the New Policies may be accessed by means of policy loans, partial surrenders, or total surrender. The owner of a New Policy may borrow up to 90% of the net policy value. The net loan cost is 1.0% during the first 10 policy years and 0.3% thereafter until the policy maturity date, when the net loan cost is zero. The net loan cost is computed based on loan interest at 5.0% per year for the first 10 policy years, 4.3% after policy year 10, and 4.0% if coverage is extended beyond the maturity date, as offset by the loan crediting rate of 4.0%. The owner of a New Policy may make partial surrenders, each in a minimum amount of $500, on or after the 1st policy anniversary. The partial surrender may not be greater than 90% of the net policy value. A transaction fee of $25 is charged for each partial surrender after the second in a policy year. The policy value will be reduced by the amount of the partial surrender plus any transaction fee. The owner of a New Policy may surrender the policy in full. No surrender or contingent deferred sales charge is imposed on a total surrender. There is no refund of any monthly policy charge deducted before the full surrender effective date. A surrender will be paid at the end of the valuation period during which the surrender request is received, except that payment of the fixed account portion of the net surrender value may be deferred as set out in the prospectus.

10. The New Policy offers a free look provision, whereby the insured can return the Policy along with a written request to terminate the Policy before the later of 10 days after the owner receives the policy, or such date as specified by applicable state law. If returned, the Company will refund the full amount of premiums when required by state law; otherwise, the Company will refund the net policy value.

11. The owner of a New Policy may request a change in the policy face amount provided that the Policy is not in a grace period. The minimum increase in policy face amount is $10,000. Principal will approve the request to increase the face amount if the insured is alive and age 75 or less at the time of the request and Principal receives satisfactory evidence that the insured is insurable under underwriting guidelines in place at the time of the request. On or after the first policy

anniversary, the policy owner may request a decrease in face amount that does not reduce total face amount below $100,000. There is no transaction fee for the face amount decrease.

12. The New Policies offer a death benefit equal to a choice of the following options: (1) The greater of the total face amount or the surrender value multiplied by the applicable percentage based on Section 7702 of the Internal Revenue Code ("IRC"); (2) the greater of the total face amount plus the policy value or the surrender value multiplied by the applicable percentage; and (3) the greater of the total face amount plus premiums paid less partial surrenders (if positive) or the surrender value multiplied by the applicable percentage. Death proceeds equal the death benefit plus interest, minus loan indebtedness and any overdue monthly policy charges. Proceeds will be paid to the beneficiaries when the insured dies as long as the Policy is in force.

13. The New Policies provide for a front-end sales load equal to the following percentages of premiums paid up to the target premium: 4.50% in year 1, 7.0% in years 2 through 5, and 3.0% in years 6 through10. The target premium is based on policy face amount, and the insured's age, risk classification and, if applicable, gender. The same charges apply to face amount increases and are based on the target premium for the increase ("incremental target premium"). Premiums paid after an increase in face amount are allocated between the "base Policy" and the "incremental Policy" that was added by the increase according to the relative face amounts of the base Policy and the incremental Policy. No charge applies to payments in excess of the applicable target or incremental target premium. For payments made more than 10 years after the last face amount increase (or, if none, initial premium payment), Principal reserves the right to charge up to maximum of 3.0% of premiums paid up to or equal to the relevant target or incremental target premium.

14. 2% of premiums paid are deducted from premium payments under the New Policy for state, federal and local taxes. 1.25% of premiums received is deducted for Principal's increased federal income tax obligations attributed to its amortization over a ten year period of a portion of its expenses in offering the New Policies ("DAC Taxes").

15. Under the New Policies, on the policy date and each monthly date thereafter, a monthly policy charge is deducted from the policy value for: (a) Cost of insurance, (b) an asset based charge, and (c) charges for any optional insurance benefits added by riders. The cost of insurance charge for standard underwriting is guaranteed to be no more than that permitted under the applicable 1980 Commissioners Standard Ordinary Mortality Table ("1980 CSO Table"). Risk classes used in computing cost of insurance charges under the New Policy include preferred non-smoker, preferred smoker, standard non-smoker, and standard smoker, as well as a range of substandard and flexible underwriting classes which can carry charges in excess of the 1980 CSO Table. The annualized asset based charge equals 0.3% of variable policy value and can be increased to 0.6%. Exchange offerees will receive prior notice of any rate increase.

16. The following supplemental insurance benefit riders are available (without charge unless indicated) and may be included in New Policies at issue: (a) A Change of Insured Rider allowing a business to change the insured when an employee leaves employment or ownership of the business changes; (b) an Enhanced Cash Surrender Value Rider providing for payment of an additional amount at the time of full surrender if it occurs during the first ten policy years; (c) an Extended Coverage Rider extending the Policy beyond the maturity date provided the insured is living and the Policy is still in force on the maturity date; (d) a Death Benefit Guarantee Rider extending the no-lapse guarantee provision provided sufficient premiums are paid; and, (e) a Supplemental Benefit Rider which provides reduced-cost additional insurance (face amount).

17. The Old Policies are offered pursuant to a registration statement filed on January 8, 1996, under the '33Act, and effective on February 1, 1997 (File No. 333–00101).

18. The Old Policies are flexible premium variable universal life insurance policies that permit the accumulation of policy values on a variable, fixed, or combination of variable and fixed basis. Where permitted by state law, the Old Policies have either a 24-Month Minimum Required Premium provision ("24 MRP") or a 5-Year No-Lapse Guarantee provision ("NLG"). The 24MRP provision ensures that the policy will not lapse during the first 24 months after the policy date if the premiums paid are greater than or equal to the minimum required premium. The NLG provision provides that if the owner pays total premiums satisfying the provision requirement, prior to the 5th policy anniversary, the policy will not terminate even if the net surrender value cannot cover the monthly policy charge. Old Policies terminate after the maturity date, upon payment of the death benefit, on a full surrender of a policy for its net surrender value, or at the end of a 61-day grace period beginning the monthly date where the current monthly charges are higher than net surrender value and neither lapse prevention provision applies. The Old Policies maturity date is the policy anniversary following the 95th birthday of the insured. At maturity (assuming no extended coverage rider is in effect), the policy owner is paid accumulated policy value less outstanding policy loans and unpaid interest.

19. The Old Policy minimum face amount is $50,000 (or $25,000 for guaranteed issue special underwriting). Values may be allocated to Subaccounts currently investing in 44 Underlying Funds or the Fixed Account guaranteeing at least 3% interest compounded annually.

20. Policy values of the Old Policies may be transferred among the Subaccounts of the Account without charge, although Principal reserves the right to charge of up to $25 per unscheduled transfer after the first 12 in a policy year. Transfers to and from the Fixed Account are permitted subject to certain restrictions.

21. Policy values under the Old Policies may be accessed by means of policy loans partial surrenders, or total surrenders. The owner of an Old Policy may borrow up to 90% of the net surrender value at a net loan cost of 2.0% for the first 10 policy years and 0.25% thereafter until maturity when the cost is zero. The net loan cost is based on loan interest at 8.0% per year. Interest credited to the loan account is 6.0% for the first ten policy years and 7.75% thereafter and 8.0% if coverage is extended beyond the maturity date. Partial surrenders of an Old Policy are permitted no more than two times per year in minimum amounts of $500. The total of the amount(s) surrendered may not be greater than 75% of the net surrender value (as of the date of the request for the first partial surrender in that policy year). The policy value is reduced by the amount of the partial surrender plus the lesser of $25 or 2% of the partial surrender. The owner of an Old Policy also may surrender the policy in full. There is a surrender charge including a contingent deferred sales load, contingent deferred administrative charge and other charges. Surrenders are paid at the end of the valuation period when the request is received, but the portion attributable to the fixed account may be deferred as the prospectus provides.

22. If the policy is not in a grace period and monthly charges are not waived by rider, the Old Policy owner may increase the policy face amount by a minimum of $50,000. Principal will approve the face amount increase request if, at the time of the request, the owner is age 85 or less, and Principal receives satisfactory evidence that the owner is insurable under underwriting guidelines in place at that time. On or after the second policy anniversary, the owner may also request a face amount decrease provided it does not reduce the total face amount below $50,000. No transaction fee applies to such decrease.

23. The Old Policies offer two death benefit options: A level death benefit equal to face amount or a death benefit equal to face amount plus policy value. If necessary to meet the definition of life insurance in section 7702 of the IRC, the death benefit under either option may be greater.

24. The Old Policies have both a front-end sales load and a contingent deferred sales charge ("CDSC"). The front-end sales load is 2.75% of (a) premiums paid during each of the first ten policy years up to the target premium for the initial face amount, and (b) for the first ten policy years after a face amount increase, premiums allocable to that increase up to the target premium for that incremental increase (an "incremental target premium"). Premiums paid after a face amount increase are allocated according to the relative face amounts of the "base Policy" and the "incremental Policy" added by the increase. Within the first ten policy years (or years after an increase), payments in excess of the relevant base or incremental target premium are assessed a 0.75% front-end sales load. The charge does not apply to payments made after ten policy years or the equivalent period following an increase.

25. A surrender charge consisting of the CDSC and a contingent deferred administrative charge ("CDAC") is imposed upon full surrender of the Old Policy within ten years of the policy date or of a face amount increase. The CDAC is $3 per $1,000 of face amount, but is guaranteed not to exceed $1,500. The maximum CDSC is 47.25% of the first two target premiums received (and the first two target premiums received for any face amount increase) for insureds under age 66 years. If the insured is older than 65 at the policy date or the date of a face amount increase, then the number of target premiums to which CDSC charges apply is reduced from two to: (a) 1.5 for ages 66–70; (b) 1.1 for ages 71–75; (c) 0.8 for ages 76–80; or (d) 0.5 for ages 81–85. (After age 85, Old Policies will no longer be issued nor face amount increases permitted.)

26. The CDSC applies only at the time of a full surrender or lapse of an Old Policy; it does not apply to partial surrenders. There is a charge for processing partial surrenders equal to the lesser of $25 or 2% of amount of the partial surrender. Decreases in face amount do not reduce the CDSC; it continues to reflect the highest face amount of the Old Policy. The amount of the CDSC is computed as of the date that the surrender or lapse occurs and decreases over time.[1]

27. Under the Old Policies, charges are deducted from premium payments for: State and local taxes (2.2% of premiums) and federal taxes (1.25%). These charges are expected to recover tax obligations of Principal as a result of its receipt of premiums under the Old Policies.

28. Under the Old Policies to reimburse Principal for the cost of maintaining the Old Policies, the guaranteed maximum $10.00 per month administration charge is assessed.

29. The Old Policy cost of insurance charge for standard underwriting is guaranteed to be no more than that permitted under the applicable 1980 CSO Table and is deducted from the Old Policy value each month. This charge compensates Principal for providing insurance protection under the Old Policy and varies from insured to insured based upon issue age, gender (except where unisex rates are mandated by law), duration since issue, smoking status and risk classification. Risk classes used in computing cost of insurance charges under the Old Policies include: preferred non-smoker, preferred smoker, standard non-smoker and standard smoker. In addition, the Company offers substandard and flexible underwriting arrangements which may result in charges in excess of the 1980 CSO Table.

30. A mortality and expense risks charge is deducted monthly from each Old Policy's Subaccount value. The annual rate for policy years 1 through 9 is 0.90% and 0.27% thereafter.

31. The Old Policies may be issued with optional insurance riders providing for a waiver of charges or premiums in the event of disability, change of insured, accelerated benefits in the event of terminal illness, extended coverage beyond the Old Policy's maturity date and a death benefit guarantee. Where permitted by state law, [if certain conditions are met] the death benefit guarantee rider is included with an Old Policy automatically at issue. Under the Old Policies, there are three optional riders that permit face amount increases without new evidence of insurability (the "Increase Riders"). A policy owner may only select one.

32. The Company also issues an Accounting Benefit Rider on Old Policies. It can be used only in connection with sale of the Old Policies as corporate owned life insurance (the "Accounting Benefit Rider") and effectively waives the surrender charges. This rider is designed to minimize the adverse impact on the financial statements of the purchaser (a corporation or other business entity), which would otherwise result under generally accepted accounting principles, by allowing the purchaser to match its expenses incurred in connection with the issuance of the Old Policy with its liquidation value.

33. Applicants represent that the most significant differences between the Old and New Policies are the following:

(a) The New Policies were designed exclusively for the corporate-owned life insurance market. The Old Policies were designed for the retail market and, secondarily, for the corporate-owned life insurance market.

(b) The New Policy has no surrender charges. The Old Policy has surrender charges comprised of a contingent deferred sales charge and a contingent deferred administrative charge during the first ten policy years and ten years following each face amount increase.

(c) The New Policy does not have an administration charge. The Old Policy has an administration charge of $10.00 per month.

(d) The New Policies currently offer a Fixed Account funding option and 71 Subaccounts; the Old Policies offer a Fixed Account funding option and 44 Subaccounts.

(e) The maximum sales charge for the Old Policy imposed for years one through 10 after issue or face amount increase is 2.75% of premiums paid up to a target premium and 0.75% of excess premiums paid over the target premium. The maximum sales charge for the New Policy is 4.50% of premiums paid in policy year one up to the target premium, 7.0% of target premiums paid in policy years 2 through 5, and 3.0% of target premiums paid in policy years 6 through 10. The Company reserves the right to impose a charge under the New Policy for years 11 and beyond up to 3.0% of target premiums. The Old

[1] In years 1 through 5, the CDSC charge is 100% of the maximum CDSC; in years 6 through 10, the charges for each year are 95.24%, 85.715%, 71.43%, 52.38%, respectively. The CDSC for a surrender or lapse in the first two policy years may be lower for certain contracts as described in the application.

Policies charge 3.45% and the New Policies charge 3.25% of premiums paid for Federal, state and local taxes.

(f) The Old Policy currently has a mortality and expense risks charge of 0.90% of the Subaccount values. The New Policy has an asset-based charge of 0.30% of Subaccount values.

(g) Flexible and substandard underwriting programs are available under both the Old and New Policies. If flexible or substandard underwriting was used to issue the Old Policy or will be used to issue the New Policy, the cost of insurance charges may be greater than standard underwriting because of higher anticipated mortality. Although the calculation methodologies used to determine the cost of insurance charges for substandard and for flexible underwriting programs are different for the Old and New Policies, the cost of insurance charge for substandard and for flexible underwriting on New Policies will never exceed the cost of insurance charges for substandard and for flexible underwriting on Old Policies.

(h) The minimum face amount for Old Policies is $50,000 and $100,000 for New Policies.

(i) The Old Policy minimum face amount increase is $50,000, while the New Policy provides for a minimum face amount increase of $10,000. The Old Policy permits face amount decreases only after the second policy year; the New Policy permits decreases after the first policy year. The New Policies do not permit decreases that would reduce the face amount below $100,000; the Old Policies set this floor at $50,000 ($25,000 for guaranteed issue underwriting).

(j) The Old Policies offer a choice of two death benefit options; the New Policies offer three.

(k) The net loan cost on the Old Policy is 2% during the first 10 policy years, and 0.25% thereafter until the policy maturity date, when the net loan cost is zero. The net loan cost for the New Policy for the same periods is 1%, 0.3% and zero.

(l) Both Old and New Policies offer these riders: Change of Insured, Extended Coverage (meaning coverage beyond the Maturity Date) and Death Benefit Guarantee. The Supplemental Benefit and the Enhanced Cash Surrender Value riders are only offered in the New Policy. The Old Policies offer the following riders that are unavailable under the New Policies: Waiver of Monthly Policy Charges, Accidental Death Benefit, Cost of Living, Extra Protection Increase, Salary Increase, Child Term, Waiver of Specified Premium, Spouse Term Insurance, Accelerated Benefits, and Accounting Benefit. Applicants represent that these riders have not been made available under the New Policies because they are not designed for the corporate-owned life insurance market or the New Policies do not need them because there are no surrender charges.

34. Applicants represent that the offer to exchange New Policies for Old Policies will be made to all of the approximately 125 policy owners who own one or more of the 1,000 Old Policies that meet all of the following criteria on the offer date: (i) Are trust or corporate owned; (ii) are used in connection with nonqualified deferred compensation plans ("NQDC plans"); (iii) are not within the 61 day grace period and have not lapsed; (iv) qualify for a New Policy under Principal's current underwriting requirements; (v) have an insurable interest and written consent from the insured employee permitting the owner to purchase the New Policy; (vi) were not issued with guaranteed issue underwriting; and (vii) are not currently named in any filed bankruptcy or insolvency proceeding.

35. Applicants also represent that the offer to exchange New Policies for Old Policies will be made by providing owners of Old Policies with a prospectus for the New Policy, accompanied by a letter explaining the offer and sales literature that compares the two Policies. Applicants state that the offering letter will advise the Old Policy owner that personalized illustrations of the Old Policy and the New Policy using the information particular to that owner are available without cost upon request.

36. Applicants represent that the exchange offer will remain open for at least 6 months after the date of an order granting the exchange application. Applicants state that, upon acceptance of the exchange offer, a New Policy will be issued with the same face amount and policy value as the Old Policy surrendered in the exchange, unless the face amount of the New Policy is increased to meet the definition of life insurance under section 7702 of the IRC.

37. Applicants further represent that immediately following the exchange, the "owner" and "insured" of the New Policy must be the same as the "owner" and "insured" under the exchanged Old Policy. Applicants state that the New Policy will treat all charges and loads, the free look period, the incontestability, and suicide provisions as a new issue.

38. Applicants indicate that the risk class for a New Policy acquired by the exchange will be the one most similar to the risk class for the Old Policy. Applicants state the if the Old Policy includes a face amount increase at a risk class worse than that for the Old Policy as originally issued, then the New Policy will be issued at the risk class most similar to that for the Old Policy as originally issued. Applicants indicate that new evidence of insurability will not be required as a condition of the exchange unless (i) the owner applies to have the insured's rating upgraded; or (ii) the owner requests a face amount increase at the time of the exchange. Applicants represent that any increase in face amount or upgrade in rating in connection with the exchange will take effect under the New Policy on the monthly anniversary after the new underwriting requirements have been satisfied.

39. Applicants represent that no surrender charge will be deducted upon the surrender of an Old Policy in connection with an exchange, and no premium loads will be deducted from the proceeds of that surrender when applied to the purchase of the New Policy as part of the exchange. Applicants state that all costs associated with the administration of the exchange offer, including the costs of commission payments, will be borne solely by the Company.

40. Applicants state that the exchange is available only to Old Policies that do not have any outstanding loans and that loans can be repaid either in cash or by means of a partial surrender. Applicants represent that the face amount the Old Policy has after any loan has been repaid will be the face amount of the New Policy. Applicant further represent that any offering materials delivered to the Old Policy owners describing the exchange will include the fact that loans must be repaid prior to the exchange and that repayment of the loan by means of a partial surrender could have adverse tax consequences.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such a company, to make an offer to the holder of a security of such company, or of any other open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the Commission has approved the terms of the offer by exemptive order or the offer complies with Commission rules adopted under section 11 governing exchange offers. Section 11(c) of the Act, which applies to offers to exchange the securities of a registered unit

investment trust for the securities of any other investment company, provides that the requirements of section 11(a) are applicable regardless of whether the exchange is on the basis of net asset value.

2. Because the proposed exchange offer constitutes an offer of exchange of two securities, each issued by a registered unit investment trust, Applicants may make the proposed exchange offer only after the Commission has approved the terms of the offer by an order pursuant to section 11(a) of the Act unless the terms of the exchange offer are consistent with those permitted by Commission rule.

3. Rule 11a–2 provides blanket Commission approval of certain types of offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. Variable annuity exchanges are permitted by Rule 11a–2 provided that the only variance from a relative net asset value exchange is an administrative fee disclosed in the offering account's registration statement and a sales load or sales load differential calculated according to methods prescribed in the rule. However, no exchange is permitted under Rule 11a–2 that involves a variable annuity acquired or exchanged that has both a front-end and a deferred sales load. Although the conditions required by Rule 11a–2 for variable life insurance policies are less extensive than those for variable annuities, there is Commission language in the release adopting Rule 11a–2 that suggests that the rule may have been intended to permit only exchanges of funding options within a single variable life insurance policy but not the exchange of one such policy for another. Investment Company Act Release No. 13407 (July 28, 1983) at "(2) Exchange Offers by Variable Life Insurance Separate Accounts." Because of the uncertainty as to the relief accorded by Rule 11a–2 for variable life insurance policies, Applicants can not rely on that rule.

4. Rule 11a–3 takes a similar approach to that of Rule 11a–2. As with Rule 11a–2, the focus of Rule 11a–3 is primarily on sales or administrative charges that would be incurred by investors for effecting exchanges. Applicants represent that the terms of the proposed offer are consistent with the Commission's approach in Rule 11a–3, to the extent that no additional sales charges will be incurred in connection with the exchange and no administrative fees will be charged to effect the exchange. However, because the investment company involved in the proposed exchange offer is a registered separate account and is organized as a unit investment trust rather than as a management investment company, Applicants can not rely upon Rule 11a–3.

5. Applicants represent that the terms of the proposed exchange offer do not present the abuses against which section 11 was intended to protect. Applicants assert that no additional sales load or other fee will be imposed at the time of exchange, other than charges related to new underwriting needed for (i) certain optional insurance riders, (ii) a change to an improvement of underwriting classification, or (iii) a face amount increase.

6. Applicants state that the policy value and face amount of a New Policy acquired in the proposed exchange will be the same immediately after the exchange as that of the Old Policy immediately prior to the exchange, except in those instances where the face amount is increased so as to comply with Section 7702 of the IRC. Accordingly, Applicants assert that the exchanges, in effect, will be relative net asset value exchanges that would be permitted under section 11(a) if the Account were registered as a management investment company rather than as a unit investment trust.

7. Applicants represent that the description of the proposed exchange offer in letters to old policy owners and in the New Policy's prospectus will provide full disclosure of the material differences between the Old and New Policies. Further, Applicants state that: (a) Those letters, and any other sales literature used in connection with the exchange offer, will have been filed with NASD, Inc. for review; (b) each old policy owner will be offered, at no charge, personalized illustrations that compare the Old and New Policies; and (c) the personal illustrations will show whether a New Policy has greater or lesser costs and charges than the Old Policy. Applicants maintain that the New Policies should be less expensive than the Old Policies for many, if not most, policy owners, and contend that even where personalized illustrations show that the New Policy may be more expensive than the Old Policy, the owner may determine that the availability of a broader range of variable investment options under the New Policy make the New Policy more attractive than the Old Policy. Applicants assert that the disclosure and the illustrations provided upon request will provide Old Policy owners with sufficient information to determine which Policy they prefer.

8. Applicants contend that, like those cited, the present application involves an exchange offer that does not present any duplication of sales loads or administrative fees. Because no additional sales load or administrative charges will be incurred as a result of any exchange pursuant to the proposed offer (other than in connection with underwriting for riders or for a face amount increase or for an improvement of underwriting classification), Applicants submit that the terms of the proposed offer are routine ones that may properly be approved by an order issued by the Division of Investment Management pursuant to delegated authority.

Conclusions

Applicants submit that, for the reasons summarized above and to the extent necessary or appropriate, approval of Applicants' offer of exchange as described, and subject to the conditions set forth in this Application, is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Therefore, Applicants submit that the Commission should grant the approval sought by this Application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–14699 Filed 9–5–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54381; File No. SR–Phlx–2006–50]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Extending Its Pilot Programs for Dividend, Merger, and Short Stock Interest Strategies

August 29, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2006, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been prepared by Phlx. Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, 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. On August 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to extend for a period of six months, until March 1, 2007, the pilot programs for: (1) Fee caps of either $1,000 or $1,750, as described below, on equity option transaction and comparison charges on dividend,[6] merger,[7] and short stock interest [8] strategies; and (2) the license fee of $0.05 per contract side imposed on dividend and short stock interest strategies. The current fee caps on equity option transaction and comparison charges on dividend, merger, and short stock interest strategies and $0.05 per contract side license fee for dividend and short stock interest strategies are in effect as a pilot program that is currently scheduled to expire on September 1, 2006. Other than extending the pilot program for an additional six-month period until March 1, 2007, no other changes to the Exchange's current dividend, merger, and short stock interest strategy programs are being proposed at this time.

The text of the proposed rule change is available on Phlx's Web site at *http://www.phlx.com*, at the Office of the Secretary at Phlx, 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, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange provides a rebate for certain contracts executed in connection with transactions occurring as part of a dividend, merger or short stock interest strategy. Specifically, for these option contracts executed pursuant to a dividend or merger strategy, the Exchange rebates $0.08 per contract side for Registered Options Trader ("ROT") executions and $0.07 per contract side for specialist executions transacted on the business day before the underlying stock's ex-date. The ex-date is the date on or after which a security is traded without a previously declared dividend or distribution. The Exchange also provides for a rebate of $0.08 per contract side for ROT executions and $0.07 per contract side for specialist executions made pursuant to a short stock interest strategy.

The net transaction and comparison charges after the rebate is applied are capped at $1,000 for short stock interest strategies executed on the same trading day in the same options class and at $1,750 for merger strategies executed on the same trading day in the same options class.[9] The net transaction and comparison charges are capped at $1,750 for dividend strategies executed on the same trading day in the same options class, except for a security with a declared dividend or distribution of less than $0.25. In that instance, the net transaction and comparison charges, after any applicable rebate is applied, are capped at $1,000 for dividend strategies executed on the same trading day in the same options class.[10]

In addition, the Exchange assesses a license fee of $0.05 per contract side for dividend and short stock interest strategies in connection with certain products that carry license fees.[11] The license fee is assessed on every transaction and is not subject to the $1,750 or $1,000 fee caps described above, nor does it count towards reaching the $1,750 or $1,000 fee caps. The $1,000 and $1,750 fee caps and the $0.05 per contract license fee are subject to a pilot program that is scheduled to expire on September 1, 2006.

The Exchange represents that the purpose of extending the pilot program for the Exchange's $1,000 or $1,750 fee caps on equity option transaction and comparison charges on dividend, merger, and short stock interest strategies and its $0.05 per contract side license fee imposed for dividend and short stock interest strategies until March 1, 2007 is to continue to attract additional liquidity to the Exchange and to remain competitive. In addition, the Exchange represents that the purpose of this proposal is to recoup the license fees owed in connection with the trading of products that carry license fees. Even with the assessment of the $0.05 license fee per contract side, the Exchange believes that the fee caps and rebates should continue to encourage specialists and ROTs to provide liquidity for dividend spread strategies.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[12] in general, and section 6(b)(4),[13] in particular, in that it is an equitable allocation of reasonable 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, as amended, will impose any burden on competition

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] In Amendment No. 1, Phlx revised the proposed rule text to state that the pilot program would end on March 1, 2007.

[6] For purposes of this proposal, the Exchange defines a "dividend strategy" as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. *See* Securities Exchange Act Release No. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR–Phlx–2006–40) and Phlx Fee Schedule.

[7] For purposes of this proposal, the Exchange defines a "merger strategy" as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.*, cash or stock. *See id.*

[8] For purposes of this proposal, the Exchange defines a "short stock interest strategy" as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. *See id.*

[9] *See* Securities Exchange Act Release Nos. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR–Phlx–2006–40); 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR–Phlx–2006–16); 53115 (January 13, 2006), 71 FR 3600 (January 23, 2006) (SR–Phlx–2005–82); 51657 (May 5, 2005), 70 FR 24851 (May 11, 2005) (SR–Phlx–2005–22); and 51596 (April 21, 2005), 70 FR 22381 (April 29, 2005) (SR–Phlx–2005–19).

[10] The fee caps are implemented after any applicable rebates are applied to ROT and specialist equity option transaction and comparison charges. *See* Securities Exchange Act Release Nos. 54174 (July 19, 2006), 71 FR 42156 (July 25, 2006) (SR–Phlx–2006–40) and 53529 (March 21, 2006), 71 FR 15508 (March 28, 2006) (SR–Phlx–2006–16).

[11] For a complete list of these product symbols, *see* the Exchange's $60,000 Firm-Related Equity Option and Index Option Cap Fee Schedule.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

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 either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [14] and subparagraph (f)(2) of Rule 19b–4 thereunder [15] because it establishes or changes a due, fee, or other charge. 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.[16]

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–Phlx–2006–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of 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–2006–50 and should be submitted on or before September 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14698 Filed 9–5–06; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] The effective date of the original proposed rule change is August 9, 2006, the date of the original filing, and the effective date of Amendment No. 1 is August 14, 2006, the filing date of the amendment. For purposes of calculating the 60-day abrogation period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 14, 2006, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

DEPARTMENT OF STATE

[Public Notice 5514]

Advisory Committee on Transformational Diplomacy; Notice of Postponement of Meeting

The Department of State announces the postponement of the meeting of the Secretary of State's Advisory Committee on Transformational Diplomacy because of scheduling conflicts. The meeting, as announced in Public Notice 5512, was to have taken place on September 6 and 7, 2006, at the U.S. Department of State at 2201 C Street, NW., Washington, DC. A new meeting date will be announced by **Federal Register** notice.

For more information, contact Madelyn Marchessault, Designated Federal Official of the Advisory Committee on Transformational Diplomacy at 202–647–0093 or at *Marchessaultms@state.gov*.

[17] 17 CFR 200.30–3(a)(12).

Dated: August 30, 2006.

Marguerite Coffey,

Acting Director, Office of Management Policy, Department of State.

[FR Doc. E6–14722 Filed 9–5–06; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 18, 2006

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–25639.
Date Filed: August 14, 2006.
Parties: Members of the International Air Transport Association.
Subject: Composite Passenger Tariff Coordinating Conference, Composite Expedited Resolutions 002ae, 210 (Memo1328), Intended effective date: 1 December 2006.

Docket Number: OST–2006–25640.
Date Filed: August 14, 2006.
Parties: Members of the International Air Transport Association.
Subject: PAC/RESO/450 dated August 11, 2006. Twenty-Ninth Passenger Agency Conference (PACONF/29), Geneva, 28–29 June 2006, Finally Adopted Resolutions r1–r35, PAC/MEET/133 dated August 11, 2006; Minutes; Intended effective date: January 1, 2007.

Docket Number: OST–2006–25659.
Date Filed: August 16, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC23/123 Europe-South East Asia and Mail Vote 503, Special Passenger Amending Resolution 010v, From Philippines (PH) to Europe (Memo 0235), Intended effective date: 31 August 2006.

Docket Number: OST–2006–25677.
Date Filed: August 18, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC2 Europe-Middle East, Expedited Resolution 002dm (Memo 0225), Intended effective date: 15 September 2006.

Docket Number: OST–2006–25678.
Date Filed: August 18, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC2 Within Middle East, Expedited Resolution (Memo 0162),

Intended effective date: 15 September 2006.

Docket Number: OST–2006–25690.

Date Filed: August 18, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC1 Within South America and Mail Vote 498, Special Amending Resolution 002m (Memo 0347), Intended effective date: 15 September 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–14705 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 18, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–25275.

Date Filed: August 17, 2006.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: September 7, 2006.

Description: Application of Northwest Airlines Inc. requesting allocation of U.S.-China frequencies, and seeking a new or amended certificate authorizing Northwest to provide nonstop scheduled foreign air transportation of persons, property and mail between its major hub at Detroit, MI and Shanghai, People's Republic of China.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–14704 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Advisory Circulars, Other Policy Documents and Proposed Technical Standard Orders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: This is a recurring Notice of Availability, and request for comments, on the draft advisory circulars (ACs), other policy documents, and proposed technical standard orders (TSOs) currently offered by the Aircraft Certification Service.

SUMMARY: The FAA's Aircraft Certification Service publishes proposed non-regulatory documents that are available for public comment on the Internet at *http://www.faa.gov/aircraft/draft_docs/.*

DATES: We must receive comments on or before the due date for each document as specified on the Web site.

ADDRESSES: Send comments on proposed documents to the Federal Aviation Administration at the address specified on the Web site for the document being commented on, to the attention of the individual and office identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: See the individual or FAA office identified on the Web site for the specified document.

SUPPLEMENTARY INFORMATION:

Comments Invited

When commenting on draft ACs, other policy documents or proposed TSOs, you should identify the document by its number. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing a final document. You can obtain a paper copy of the draft document or proposed TSO by contacting the individual or FAA office responsible for the document as identified on the Web site. You will find the draft ACs, other policy document and proposed TSOs on the "Aircraft Certification Draft Documents Open for Comment" Web site at *http://www.faa.gov/aircraft/draft_docs/.* For Internet retrieval assistance, contact the AIR Internet Content Program manager at 202–267–8361.

Background

We do not publish an individual **Federal Register** Notice for each document we make available for public comment. Persons wishing to comment on our draft ACs, other policy documents and proposed TSOs can find them by using the FAA's Internet address listed above. This notice of availability and request for comments on documents produced by the Aircraft Certification Service will appear again in 30 days.

Issued in Washington, DC, on August 28, 2006.

Terry Allen,

Acting Manager, Production and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 06–7462 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change In Use of Aeronautical Property at Manchester-Boston Regional Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments.

SUMMARY: The FAA is requesting public comment on the City of Manchester, New Hampshire's request to change a portion (approx. 58 acres) of airport property from aeronautical use to non-aeronautical use. The property is at various locations on the Airport. The State of New Hampshire will acquire a combination of fee and easements for construction of an access road from State Route 3 to the Airport. The conveyances include property rights for both construction and environmental mitigation. The land was acquired as follows: Surplus Property Deeds dated September 27, 1962, June 4, 1975 (approx. 33 acres; FAAP Project Nos. 9–27–018–C603 and 9–27–018–C605 (approx. 6.5 acres); and City funds (approx. 18 acres).

The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

DATES: Comments musts be received on or before October 6, 2006.

ADDRESSES: Documents are available for review by appointment by contacting Mr. Richard Fixler, Assistant Airport Director, Engineering & Planning, Manchester-Boston Regional Airport, Manchester, NH, Telephone 603–624–6539 or by contacting Donna R. Witte, Federal Aviation Administration, 16 New England Executive Park,

Burlington, Massachusetts, Telephone 781–238–7624.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7624.

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21) requires the FAA to provide an opportunity for public notice and comment to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport property for aeronautical purposes.

Issued in Burlington, Massachusetts, on August 21, 2006.

LaVerne F. Reid,

Manager, Airports Division, New England Region.

[FR Doc. 06–7461 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25694]

Notice Concerning Airport Advisory Service at Certain Airports in the Continental United States, Excluding Alaska

AGENCY: Federal Aviation Administration (FAA).

ACTION: Request for public comment.

SUMMARY: The FAA is requesting public comment on the Airport Advisory Service provided at twenty (20) airports in the continental United States, excluding Alaska.

The Airport Advisory Service, Local or Remote, is an optional service provided by Automated Flight Service Stations for pilots of landing or departing aircraft at airports either without air traffic control towers or with part-time control towers. The Airport Advisory Service information includes weather updates, wind and altimeter information, runway usage, aeronautical data, and any known air traffic in the area.

Since Airport Advisory Service is provided full-time at many of the affected airports and part-time at others, with varying degrees of usage by the pilot community, it is important to obtain feedback from individual users and from user groups in order to ascertain the value of the service provided to the aviation community at those airports. The FAA is particularly interested in comments concerning the necessity of the service, the availability of the service, the importance of the service, and how often the service is used. Users are also welcome to include comments concerning any other aspect of your experience with Airport Advisory Service.

The request for comments includes Airport Advisory Service at the following airports: Altoona-Blair County Airport (AOO), Altoona, Pennsylvania; Anderson Regional Airport (AND), Anderson, South Carolina; Anniston Metropolitan Airport (ANB), Anniston, Alabama; Casper-Natrona County International Airport (CPR), Casper, Wyoming; Cedar City Regional Airport (CDC), Cedar City, Utah; Columbia Regional Airport (COU), Columbia, Missouri; Elkins-Randolph Airport (EKN), Elkins, West Virginia; Gainesville Regional Airport (GNV), Gainesville, Florida; Grand Forks International Airport (GFK), Grand Forks, North Dakota; Greenwood-Leflore Airport (GWO), Greenwood, Mississippi; Huron Regional Airport (HON), Huron, South Dakota; Jackson-McKellar-Sipes Regional Airport (MKL), Jackson, Tennessee; Jonesboro Municipal Airport (JBR), Jonesboro, Arkansas; Louisville-Bowman Field Airport (LOU), Louisville, Kentucky; Macon-Middle Georgia Regional Airport (MCN), Macon, Georgia; Millville Municipal Airport (MIV), Millville, New Jersey; Prescott-Ernest A. Love Field Airport (PRC), Prescott, Arizona; St. Louis-Spirit of St. Louis Airport (SUS), St. Louis, Missouri; St. Petersburg-Clearwater International Airport (PIE), St. Petersburg, Florida; Miami-Kendall-Tamiami Executive Airport (TMB), Miami, Florida.

DATES: Comments must be received by October 6, 2006.

ADDRESSES: Written comments may be submitted [identified by Docket Number FAA–2006–25694] using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.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:* 1–202–493–2251.
- *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.

Privacy: All comments received will be posted, without change, to *http://dms.dot.gov*, including any personal information you provide (such as signatures on behalf of an association, business, labor union, or any other group). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or by visiting *http://dms.dot.gov*.

Docket: To read the comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeanne Giering, Manager, Flight Services Operations Procedures and Safety; Mail Drop: 1575 Eye Street, NW., Room 9400; 800 Independence Avenue, SW.; Washington, DC 20591; telephone (202) 385–7627; fax (202) 385–7617; e-mail *Jeanne.Giering@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons or organizations to submit written comments or views concerning this proposal. Please reference the Docket Number at the beginning of your comments. Comments should be specific and should explain the reason for your concurrence or non-concurrence with the proposal, including supporting data.

Please send two (2) copies of your comments to one of the addresses listed in the **ADDRESSES** section of this document.

All comments submitted will be available for public viewing either in person or online, including any personal information you provide. Please refer to the *Privacy* section of this document.

Issued in Washington, DC on August 31, 2006.

John T. Staples,

Director of Flight Services Program Operations.

[FR Doc. 06–7456 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Blair Municipal Airport, Blair, NE

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Blair Municipal Airport

under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before October 6, 2006.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, Missouri 64106–2325.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Anna Lannin, Engineering Division, Nebraska Department of Aeronautics, P.O. Box 82088, Lincoln, NE 68501.

FOR FURTHER INFORMATION CONTACT: Nicoletta Oliver, Airports Compliance Specialist, FAA, Central Region, 901 Locust, Kansas City, MO 64106–2325, (816) 329–2642.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Blair Municipal Airport under the provisions of AIR21.

On August 24, 2006, the FAA determined that the request to release property at the Blair Municipal Airport, submitted by the Nebraska Department of Aeronautics, as agent for the Blair Airport Authority, met the procedural requirements of the Federal Aviation Administration. The FAA will approve or disapprove the request, in whole or in part, no later than November 30, 2006.

The following is a brief overview of the request.

The Blair Airport Authority requests the release of approximately 13.97 acres of airport property. The land is currently not being used for aeronautical purposes. The purpose of this release is to sell the land to the Nebraska Department of Roads (NDR) for improvements to U.S. Highway 133.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents that are relevant to the request, in person at the Nebraska Department of Aeronautics, Lincoln, Nebraska.

Issued in Kansas City, Missouri, on August 24, 2006.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 06–7459 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Finding of No Significant Impact

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

ACTION: Finding of no significant impact.

SUMMARY: The Federal Aviation Administration (FAA) prepared an Environmental Assessment (EA) to evaluate the proposal from Blue Origin, LLC (Blue Origin) to construct and operate a commercial space launch site to be located on privately-owned property in Culberson County, Texas. Blue Origin proposes to develop this commercial space launch site to launch vertical reusable launch vehicles (RLVs) carrying space flight participants [1] on suborbital, ballistic trajectories to altitudes in excess of 99,060 meters (325,000 feet) above sea level. The EA evaluated the potential environmental impacts of issuing experimental permits and/or licenses to Blue Origin authorizing vertical launches and landings of RLVs and/or operation of a launch site for same. Blue Origin may seek experimental permits to conduct early developmental and test flights. Blue Origin may also seek a launch site operator license, RLV mission-specific licenses, and RLV operator licenses, as appropriate. After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, the FAA, Office of Commercial Space Transportation (AST) has determined that issuing the experimental permits and/or licenses analyzed in the EA to Blue Origin would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA). Therefore the preparation of an Environmental Impact Statement (EIS) is not required and AST is issuing a Finding of No Significant Impact (FONSI). The FAA made this determination in accordance with all applicable environmental laws.

For a copy of the Environmental Assessment: Visit the following internet address: *http://ast.faa.gov* or contact Mr. Doug Graham, FAA Environmental Specialist, 800 Independence Avenue SW., Room 331, Washington, DC 20591. You may also send requests via e-mail to *doug.graham@faa.gov* or by telephone at (202) 267–8568.

DATES: The Draft EA was released for public comment on June 28, 2006. The FAA held a public meeting on the Draft EA on July 25, 2006 in Van Horn, Texas to collect comments from the public. All comments received before July 27, 2006 were considered in the preparation of the Final EA.

Proposed action: Under Title 49 United States Code (U.S.C.), Subtitle IX, Sections 70101–70121, Commercial Space Launch Act, the FAA regulates launches and reentries of launch and reentry vehicles, and the operation of launch and reentry sites when carried out by U.S. citizens or within the United States. (49 U.S.C. 70104, 70105) Chapter 701 directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States, and to encourage, facilitate, and promote commercial space launch and reentry by the private sector. (49 U.S.C. 70103, 70105)

The Commercial Space Launch Amendments Act of 2004 (CSLAA) promotes the development of the emerging commercial/human space flight industry and establishes an experimental permit regime for developmental reusable suborbital rockets. This newly established experiment permit regime provides an alternative mechanism to regulate the launch and reentry of reusable suborbital rockets (49 U.S.C. 70105a). To conduct commercial launch operations, Blue Origin must obtain the required experimental permit(s) and/or license(s) from the FAA. Under the proposed action the FAA would issue experimental permits, a launch site operator license, RLV mission-specific licenses, and/or RLV operator licenses, as appropriate.

Experimental permits differ from launch licenses in a number of ways.

- Unlike a licensed operator, no person may launch a reusable suborbital rocket under an experimental permit for carrying any property or human being for compensation or hire.

[1] Space flight participant means an individual, who is not crew, carried within a launch vehicle or reentry vehicle. 49 United States Code (U.S.C.) 70102(17) Flight crew means any employee of a licensee or transferee, or of a contractor or subcontractor of a licensee or transferee, who is on board a launch or reentry vehicle and performs activities in the course of that employment directly relating to the launch, reentry, or other operation of the launch vehicle or reentry vehicle. See 49 U.S.C. 70102(2) (defining crew).

• A permit is not transferable. A license is transferable from one entity to another, which could occur after a merger or acquisition.

• Damages arising out of a permitted launch or reentry are not eligible for "indemnification," the provisional payment of claims under 49 U.S.C. 70113. To the extent provided in an appropriation law or other legislative authority, damages caused by licensed activities are eligible for the provisional payment of claims.

• A permit must authorize an unlimited number of launch and reentries for a particular reusable suborbital rocket design operating from a site during a one-year period.

An experimental permit would allow Blue Origin to conduct testing of reusable suborbital rockets that would be launched and landed solely for the purposes of (1) research and development to test new design concepts, new equipment, or new operating techniques; (2) showing compliance with requirements as part of the process for obtaining a license; and/or (3) crew training prior to obtaining a license for a launch or reentry using the design of the rocket for which the permit would be issued. The FAA would issue a separate permit for each rocket design.

An RLV mission-specific license authorizing an RLV mission would allow Blue Origin to launch and reenter, or otherwise land, one model or type of RLV from a launch site approved for the mission to a reentry site or other location approved for the mission. A mission-specific license authorizing an RLV mission may authorize more than one RLV mission and identifies each flight of an RLV authorized under the license. An RLV operator license would allow Blue Origin to launch and reenter, or otherwise land, any of a designated family of RLVs within authorized parameters. A licensee's authorization to conduct RLV missions terminates upon completion of all activities authorized by the license, or the expiration date stated in the reentry license, whichever comes first.

The FAA is the lead Federal agency responsible for authorizing the proposed launch activities at the proposed Blue Origin facility. Issuing permits and licenses are Federal actions and are subject to review as required by the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321, *et seq.* The EA was prepared to describe the proposed action and alternatives considered, the affected environment, the potential effects of the proposed action on that environment, and measures to be taken to mitigate those potential effects. The FAA is using the analysis in the EA as the basis for an environmental determination of the potential impacts of these proposed actions.

Upon receipt of complete permit or license applications, the Associate Administrator for Commercial Space Transportation must determine whether to issue experimental permits or licenses to Blue Origin to launch reusable suborbital rockets on privately-owned property in Culberson County, Texas. Environmental findings are required for the evaluation of license and permit applications.

The proposed action is for the FAA to issue one or more experimental permits and/or licenses to Blue Origin. Blue Origin proposes to launch RLVs on suborbital, ballistic trajectories to altitudes in excess of 99,060 meters (325,000 feet). To conduct these operations, Blue Origin would construct a private launch site, which would include a vehicle processing facility, launch complex, vehicle landing and recovery area, space flight participant training facility, and other minor support facilities. The proposed Blue Origin launch site is approximately 40.2 kilometers (25 miles) north of Van Horn, Texas. It lies within a larger, privately-owned property known as the Corn Ranch.

The proposed action would include the operation of a launch site to support launches of the Blue Origin New Shepard RLV and New Shepard prototype test vehicles. The New Shepard RLV system would be comprised of a propulsion module and a crew capsule capable of carrying three or more space flight participants to space. The crew capsule is stacked on top of the propulsion module, so the RLV would be vertically-oriented during flight. The stacked vehicle would have a roughly conical shape with a base diameter of approximately 7 meters (22 feet) and a height of approximately 15 meters (50 feet). The propulsion module would be fully reusable, would carry its own avionics, and would operate autonomously under the control of on-board computers. The propulsion module would use 90 percent concentration hydrogen peroxide, called high test peroxide, and rocket propellant grade kerosene as the propellants. Before flying the human-carrying operational New Shepard RLV for commercial operation, Blue Origin also proposes to develop and flight test a series of unmanned prototypes at the West Texas launch site.

The activities analyzed in the proposed action include clearing and grading the land where construction activities are proposed to occur; constructing the launch site facilities; transporting the vehicle, vehicle components, and propellants to the proposed site; assembling the various vehicle components; conducting ground-based tests; moving the launch vehicle to the test pad; loading the space flight participants or other payload; loading propellants into the launch vehicle; igniting the rocket motors; collecting any debris from the test pad; and landing, recovering, and transporting the RLV from the landing pad.

Purpose and Need: The proposed Blue Origin launch facility would provide Blue Origin with an alternative to launching the New Shepard vehicle from a Federal or other FAA-licensed launch facility. The proposed facility would provide a location from which to transport space flight participants to the edge of space and return them to the same launch area after a short flight. These activities are consistent with the purposes of the CSLAA. Given the infrastructure and development costs associated with constructing launch facilities, the Federal government has been the owner/operator of, has leased/sold unused or excess infrastructure, and has provided expertise to commercial launch operators for the majority of commercial launches. However, with increasing demand for access to space, commercial launch site operators have begun to develop proposals to offer launch sites, not collocated with Federal facilities or operated by the Department of Defense or the National Aeronautics and Space Administration, to meet the demand for lower cost access to space.

The proposed Blue Origin launch site would provide the infrastructure necessary to support testing and operation of Blue Origin's New Shepard RLV. Accordingly, the proposed action would permit Blue Origin to pursue its objective of developing safe, inexpensive, and reliable human access to space.

Alternatives Considered: Alternatives analyzed in the EA included (1) the proposed action, issuing experimental permits, a launch site operator license, RLV mission-specific licenses, and/or RLV operator licenses, as appropriate, to Blue Origin for the launch and landing of vertical launch/vertical landing reusable suborbital rockets on privately-owned property in Culberson County, Texas; and (2) the no action alternative. The activities included in this analysis are launching and landing the New Shepard RLV and prototype test vehicles at the proposed site. The EA conservatively assumes that all tests and

launches would be conducted using the final operational New Shepard RLV. Therefore, the FAA did not specifically analyze the impacts associated with issuing a subset of experimental permits or licenses for a mix of vehicles because the impacts would be within the range analyzed.

Under the no action alternative, the FAA would not issue permits or licenses to Blue Origin for the purposes of conducting launch operations in Culberson County, Texas. Blue Origin would not conduct RLV testing or launch operations, and the goals set forth by the CSLA would not be advanced. As part of the no action alternative, the proposed site in Culberson County would remain private property. Blue Origin would be forced to identify other private property options or to reconsider association with State-sponsored spaceport facilities. For Blue Origin, these decisions could result in higher RLV development and operational costs, decreased operational capabilities, and delays to Blue Origin's proposed development schedules.

Environmental Impacts

Air Resources

The proposed project area is currently in attainment under the National Clean Air Act. Impacts on air quality would occur during the construction and operation of the launch site. The estimated increases in emission concentrations from planned construction activities would be small fractions of either State or Federal ambient air quality standards. Construction impacts are expected to be localized and short-term. The estimated increases in ambient background concentrations from operations would be negligible. No significant impacts on air resources would be anticipated.

Ecological Resources

Construction activities would result in the clearing, grading, or disturbance of approximately 308 hectares (760 acres), which is approximately 4.1 percent of the 7,527 hectares (18,600 acres) within the launch site perimeter fence line. Almost all construction activity would be in vegetation characterized as creosote bush community, which comprises approximately 5,595 hectares (13,825 acres) of the launch site. Because this plant community type is common on the launch site and throughout the Chihuahuan Desert, the anticipated loss would represent only a small portion of this habitat type and would not adversely affect local or regional diversity of plants and plant communities.

Construction activities would cause impacts on wildlife through elimination of vegetation communities (*i.e.*, habitats) and their associated fauna. Small numbers of animals inhabiting the construction area could be displaced by construction activity while others would be expected to disperse to less disturbed areas of the proposed launch site or off site.

Launch and landing noise and sonic booms would have potential for disturbing wildlife; however, the disturbance would be short lived and would have no more effect on local wildlife than military aircraft that routinely fly over the Corn Ranch property on low-level training missions.

No State or federally listed species were observed in surveys of the proposed Blue Origin site conducted in January and April 2005. Based on the habitats present, three State-listed species (Chihuahuan Desert lyre snake, Trans-Pecos black-headed snake, Texas horned lizard) and one federally-listed species (Northern aplomado falcon) could occur in limited numbers in the vicinity of the site. It is conceivable that small numbers of these State-listed reptiles or Northern aplomado falcons could be disturbed by construction activities, launch noise or sonic booms. Any disturbance from launch activities would be brief (less than approximately one minute) and create impacts at the proposed launch site similar to those currently experienced as a result of military aircraft operations.

The FAA conducted informal consultation with the U.S. Fish and Wildlife Service (USFWS) regarding potential impacts to threatened or endangered species. The USFWS concurred with the FAA's determination that the proposed action would not adversely affect listed or candidate species or critical habitat.

Cultural/Native American Resources

The proposed locations where construction activities would occur for the launch site contain two archaeological sites determined to be eligible for the National Register of Historic Places. Mitigation measures have been proposed to protect these sites during construction. If previously unknown cultural deposits are discovered, construction activities in the area would halt, and a qualified archaeologist would evaluate the discovery. Appropriate treatment activities would be determined, if necessary, in consultation with the Texas State Historic Preservation Officer (SHPO). Direct impacts to cultural resources from maintenance or operating activities would be unlikely since these activities would take place within areas already disturbed by construction. The FAA, SHPO, and Blue Origin signed a Memorandum of Agreement regarding avoidance of adverse effects to site 41CU695 and mitigation of adverse effects to site 41CU696, Culberson County, Texas.

Hazardous Materials/Waste Management

The construction activities would use small quantities of hazardous materials, which would result in generation of small volumes of hazardous wastes. The hazardous materials that are expected to be used are common to construction activities and include diesel fuel, gasoline, and liquefied natural gas to fuel the construction equipment, hydraulic fluids, oils and lubricants, welding gases, paints, solvents, adhesives, and batteries. Appropriate hazardous material management techniques would be followed to minimize their use and ensure safe disposal.

Non-hazardous and hazardous waste generated during construction of the launch site would include construction debris, empty containers, spent solvents, waste oil, spill cleanup materials (if used), and lead-acid batteries from construction equipment. Blue Origin would ensure that construction contractors safely remove these wastes from the site for recycling or disposal in accordance with applicable Federal, State, and local requirements.

The hazardous material management practices described above for construction would also be followed during launch site operations. The majority of the hazardous materials used in launch operations are the propellants for the launch vehicle and compressed gases. Other hazardous materials would be used in much smaller amounts with on site storage limited to less than 379 liters (100 gallons). Substantial impacts to the environment are not expected from the presence of hazardous materials and wastes during launch site operations.

Land Use (Including Farmland and Section 4(f) Resources)

Construction of the launch site would permanently cover about 90.3 hectares (223 acres) of desert scrubland with impermeable surfaces, such as building foundations, test pad, parking lots, etc. This relatively small area represents 1.2 percent of the launch site. Operation of the launch site would necessitate the fencing and enclosure of approximately

7,527 hectares (18,600 acres) of desert scrubland and grassland that are currently used as a private wildlife management area. This acreage will continue to provide habitat for wildlife and land use would be essentially unchanged; only the core facility areas would be converted to industrial use.

No prime farmland, unique farmland, farmland of State importance, or general farmland would be converted to a non-agricultural use as a result of the proposed action. No conflicts with existing agricultural uses would occur as a result of the proposed action. Section 4(f) properties would not be significantly impacted by the proposed action because it does not require the use of any section 4(f) properties, and it does not create a constructive use that substantially impairs the property.

Visual Resources

During construction, the visual landscape would be impacted primarily by construction activities associated with the two launch site access road improvements that would intersect State Highway 54 and the associated vehicle traffic traveling to and from the launch site. A visual impact from construction activities would result because the launch site facilities would be built 8 kilometers (5 miles) to the east of State Highway 54. Facilities and infrastructure including buildings, storage tanks, launch and landing pads, access roads, parking areas, fencing, and lighting would be constructed. A fire break would be cleared along the perimeter fence to prevent the spread of fire on or off the launch site. The tallest building would be approximately 26 meters (84 feet) high, and would be located 8 kilometers (5 miles) to the east of State Highway 54. Portions of the facility may be visible to motorists traveling on Highway 54, but the proposed construction and operation of the facility would not result in a significant impact on visual resources.

Noise

Construction activities and traffic noise would temporarily increase the ambient noise levels at the proposed launch site. Such activities could potentially create individual noise sources ranging from 70 to 100 A-weighted decibels (dBA) at 30.5 meters (100 feet) from the activities. The construction-related noise could last approximately 12 months but would not be appreciable off site given the size of the property and the distance of the construction activities from the surrounding population.

The nearest public access to the launch and landing platforms would be approximately 8.5 kilometers (5.3 miles) away on Highway 54. Launch noise at that location would be approximately 85 dBA. The nearest residence is approximately 10.9 kilometers (6.8 miles) away and would experience slightly less than 85 dBA. The duration of launch noise would be approximately one minute, with the peak noise lasting from 5 to 15 seconds after launch. The nearest population center, Van Horn, is approximately 40.2 kilometers (25 miles) away. At this distance, the launch noise would be less than 65 dBA, the threshold of significance.

Because Blue Origin's launch vehicle would ascend and descend vertically, sonic booms would propagate away from the Earth's surface during launch and towards the Earth's surface during descent. The peak overpressure, 7.8 kilograms per square meter (1.6 pounds per square foot), would occur at approximately 1.3 kilometers (0.8 mile) from the landing pad. At the closest location that would be occupied by workers or visitors, the overpressure would be 4.9 kilograms per square meter (1.0 pound per square foot), which approximates 85 dBA. At 12.9 kilometers (8 miles) the sonic boom sound level would drop to about 80 dBA, and at 37 kilometers (23 miles) the sonic boom would probably be indiscernible.

Geology and Soils (Including Floodplains)

Construction activities have the potential to disturb approximately 308 hectares (760 acres) of soil. Of this total, approximately 90.3 hectares (223 acres) are expected to be permanently covered with impermeable surfaces such as buildings and parking areas. Because of the clay content of the site soils, it may be necessary to strip 0.3 to 1.2 meters (1 to 4 feet) below existing grade prior to construction of the facilities. Depending on the depth of excavation, the volume of soil excavated would range from approximately 10,930 to 43,800 cubic meters (14,300 to 57,300 cubic yards).

Soil erosion due to runoff and wind would be of concern during construction. Best construction management practices would be employed to limit soil loss below significant levels. The proposed site would not be located in the 100-year floodplain.

Socioeconomics (Including Natural Resources and Energy Supply)

Construction would require a monthly average of approximately 45 workers, which would help to stimulate the local economy and would create a small number of additional indirect jobs. The economic benefit would be small; however, because the bulk of the construction-generated wages would be spent outside the area of the proposed launch site. Operations would require approximately 20 to 35 personnel. The additional employment opportunities created by the proposed action would represent an increase of less than one percent in the region's labor force.

The proposed action does not create any major changes that would have a measurable effect on local supplies of energy or natural resources. The proposed action does not require the use of unusual materials or materials in short supply.

Traffic and Transportation

State Highway 54 would be the road most impacted by construction activities. It is the only access to the construction site and is an infrequently used highway. During the peak period of construction, approximately 70 construction workers would be commuting to the site. The monthly average construction workforce is expected to be approximately 45. In addition there would be deliveries of equipment, supplies, and building materials on a daily basis. Highway 54 is expected to undergo improvements at the beginning of 2006; therefore, no deterioration of the highway should occur.

During facility operations, the commuting workforce would be approximately 20 to 35 workers. During launches, customers and other visitors would be visiting the site. Shipments of rocket propellants would be needed to fuel the launch vehicles. There would also be shipments of gaseous helium and nitrogen. Diesel fuel would be needed for diesel generators. There would be other shipments of supplies and materials. However, the traffic from operations is expected to be less than that for construction. Existing roads would be well able to handle the traffic without congestion.

Water Resources (Including Wetlands and Wild and Scenic Rivers)

It is expected that two new on site wells would be used to supply construction activities, if necessary. Salt Bolson aquifer drawdown for the construction withdrawal would be 3.6 centimeters (1.4 inches) at 9.1 meters (30 feet) from the withdrawal well (conservatively assuming withdrawal from a single well) after one year of pumping; the drawdown would decrease to 0.083 centimeter (0.033 inch) at 1,609 meters (1 mile) from the well. If it is necessary to screen new

wells in the more productive Capitan aquifer, then the drawdown for construction withdrawal would be 0.57 centimeter (0.22 inch) at 9.1 meters (30 feet), decreasing to 0.087 centimeter (0.034 inch) at 1,609 meters (1 mile) from the well. Impacts of this water withdrawal on other possible on site and off site water uses would not be a significant impact.

Best management water control practices, including storage and control of liquids, would be employed for all construction activities in accordance with Texas State regulations. The launch site facility design would incorporate water management and spill containment processes to minimize potential impacts to water resources.

There are no permanent, naturally occurring surface waters or open freshwater systems, wild and scenic rivers, or federally protected wetlands as defined by section 404 of the Clean Water Act on the proposed site. Therefore, there would be no impacts to any of these resources.

Airspace

The airspace above and around the launch site is used by commercial and military aircraft. Prior to scheduling flight countdown activities, Blue Origin would request the FAA's approval for exclusive use of the airspace directly above the launch site for a specific launch and recovery time window, expected to not exceed three hours. The steep flight ascent profile of the Blue Origin reusable launch vehicle ensures that at no time in any nominal ballistic trajectory would the vehicle's ground track depart from the boundaries of the Corn Ranch.

Environmental Justice

Because construction and operations impacts would not significantly impact the surrounding population, and no minority or low-income populations would be disproportionately affected, no disproportionately high and adverse impacts would be expected on minority or low-income populations.

Health and Safety

Based on Bureau of Labor Statistics data, it was estimated that during construction, 1.8 total lost workdays, no fatalities, and 3.8 total recordable cases of injury, illness, or death could be expected during the 12-month construction period. Using the same statistical data it was estimated that 0.5 total lost workdays, no fatalities, and 1 recordable case of injury, illness, or death could be expected from the operation of the Blue Origin facility.

The proposed launch site is expected to have very limited occurrence of hazardous materials and waste, and thus there would be minimal safety and health risks to workers or members of the public associated with the proposed Blue Origin site. Because there are no health impacts expected to members of the public (adults or children) from the operation of the proposed launch site, the requirements of Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" are not applicable to this action.

During the operation of the vehicle, there is the possibility of an accident or off-nominal situation. In the majority of foreseeable off-nominal scenarios, the crew capsule, abort module, and propulsion module would all land within the perimeter fence of the launch site. In some rare cases, the vehicles may land outside the fence line. However, in nearly all cases, the vehicles would stay within the boundaries of private land controlled by Blue Origin and present no danger to the public. In the unlikely event the vehicles impact outside the privately controlled Blue Origin land, the surrounding properties consist of extremely sparsely populated rangeland. During any landing away from the landing pad, the potential exists for crushing vegetation and animals as the vehicle touches down to ground, fire, and, for the propulsion module and abort module, the dispersal of unused propellant.

Cumulative Impacts

Cumulative impacts are the incremental impact of the actions when added to other past, present, and reasonably foreseeable future action regardless of what agency (Federal or non-Federal) or person undertakes such other actions. (40 CFR 1508.7) The cumulative impacts analysis focused on only those past, present, and reasonably foreseeable future actions that have the potential to contribute to cumulative impacts. These actions include the operation of a marble mine in the Sierra Diablo Mountains, tourist traffic to Guadalupe Mountains National Park or Carlsbad Caverns National Park, and current commercial and military aviation activities within Culberson County airspace. These actions were analyzed for their potential to contribute to cumulative transportation and airspace impacts.

The commuters to and from the marble mine, local and tourist traffic, and the projected number of vehicles at the proposed launch site would result in increased traffic along State Highway 54. Currently, approximately 180 vehicles use State Highway 54 each day. Under the proposed action, the total number of vehicles using State Highway 54 would increase to approximately 320 per day (13 vehicles per hour) during the peak construction phase and to approximately 230 per day (10 vehicles per hour) during the operations phase. Increases of this magnitude would not have a significant impact on local traffic or the normal flow of traffic on State Highway 54. Although a Level-of-Service analysis has not been performed, traffic on Highway 54 can be characterized as free flow or Class A as defined by the National Research Council. Existing roads would be able to handle the proposed increase in traffic without congestion.

Blue Origin launches would compete for airspace with current commercial and military aviation activities in the airspace about the launch site. Blue Origin would attempt to minimize this competition by appropriate timing of launches and coordination of overall air traffic with the FAA pursuant to a letter of agreement with the Albuquerque Air Traffic Control Center, resulting in a small cumulative impact.

Consistency With Community Planning

The proposed action has been reviewed and has been found to be consistent with State and local planning objectives from the Texas State, Culberson County, and local community governments.

No Action Alternative

Under the no action alternative, the FAA would not issue permits or licenses to Blue Origin for the conduct of launch operations in Culberson County, Texas. Blue Origin would not conduct RLV testing or launch operations at the proposed site and the goals set forth by the CSLA would not be advanced. As part of the no action alternative, the proposed site in Culberson County would remain private property. Blue Origin would be forced to identify other private property options or to reconsider association with State-sponsored spaceport facilities. For Blue Origin, these decisions could result in higher RLV development and operational costs, decreased operational capabilities, and delays to Blue Origin's proposed development schedules.

Determination

An analysis of the proposed action has concluded that there are no significant short-term or long-term effects to the environment or surrounding populations. After careful and thorough consideration of the facts

herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives set forth in Section 101(a) of NEPA of 1969 and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(c) of NEPA. Therefore, an EIS for the proposed action is not required.

Issued in Washington, DC on: August 29, 2006.

George Nield,

Deputy Associate Administrator for Commercial Space Transportation.

[FR Doc. E6–14741 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement: West Bend Municipal Airport, West Bend, WI

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Issuance of notice of intent to prepare an Environmental Impact Statement and to conduct scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential impacts of proposed improvements at West Bend Municipal Airport. The FAA plans to hold scoping meetings to obtain input from Federal, State, local agencies, other interested parties, and the general public regarding the EIS.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota, 55450–2706. Phone (612) 713–4350.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA and the Wisconsin Department of Transportation (WisDOT), will prepare a joint EIS for proposed improvements at West Bend Municipal Airport. The lead agency for the preparation of the EIS is the FAA. The WisDOT will serve as a joint-lead (co-lead) agency with the FAA. The EIS will be both a Federal and State document prepared in accordance with NEPA and the Wisconsin Environmental Policy Act (WEPA). All portions of the document will apply to both statutes, unless otherwise noted in the text. Scoping meeting(s) will be conducted as joint FAA and WisDOT meetings.

As presently conceived by the airport owner (The City of West Bend, WI) the proposed improvements include: Construction of a new 5,500 ft x 100 ft Runway 7/25 with full instrument landing system (ILS) having Category I (CAT I) capability and associated navigational aids (NAVAIDs); construction of a full parallel taxiway to new Runway 7/25; hangar area development; land acquisition; widening and rerouting of Highway 33 around the north side of the airport between North Trenton Road and 4,000 ft east of North Oak Road.

A draft Final Environment Assessment (EA) was prepared in March 2005 to assess the proposed improvements at West Bend Municipal Airport. Informal review of the draft Final EA resulted in a decision to proceed to an EIS. The need to prepare an EIS is based on the procedures described in FAA Order 5050.4B, "National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions," and FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures."

The proposed improvements would involve discharges of dredged and fill material into waters of the United States which are regulated under Section 404 of the Clean Water Act. The U.S. Army Corps of Engineers St. Paul District (Corps) has the permitting responsibility for discharges into waters of the United States associated with the proposed improvements. The FAA will pursue an integrated NEPA/Section 404 permit process for this EIS in cooperation with the Corps.

At a minimum, the Corps and the Federally Highway Administration (FHWA) will be invited to serve as cooperating agencies with FAA in development of this EIS. The FHWA involvement will focus on the road widening and rerouting aspects of Highway 33. The Corps, in its role as a cooperating agency, will use the EIS in making its decision on whether to issue a section 404 permit under the Clean Water Act.

To the fullest extent possible, the EIS will be integrated with analysis and consultation required by the Endangered Species Act of 1973, as amended (Pub. L. 93–205; 16 U.S.C. 1531 et seq.); the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Pub. L. 94–265; 16 U.S.C. 1801, et seq.), the National Historic Preservation Act of 1966, as amended (Pub. L. 89–655; 16 U.S.C. 470, et seq.); the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85–624; 16 U.S.C. 742a, et seq. and 661–666c); and the Clean Water Act of 1977, as amended (Pub. L. 92–500; 33 U.S.C. 1251, et seq.); and all applicable and appropriate Executive Orders.

The EIS will include identification of the project's purpose and need, the evaluation of the no action alternative and reasonable alternatives that may be identified during the agency and public scoping meetings. The EIS will also identify all environmental impacts as applicable, including but not limited to, noise impacts, impacts on air and water quality, wetlands, ecological resources, floodplains, historic resources, hazardous materials, and socioeconomics.

Scoping Meetings: To ensure that all substantive issues related to the proposed action are identified, the FAA will hold two (2) governmental agency and one (1) public scoping meeting(s) to solicit input from the public, interested parties, and various Federal, State and local agencies having jurisdiction or having specific expertise with respect to any environmental impacts associated with the proposed improvements. The first governmental agency scoping meeting will be held from 9 a.m. until 12 p.m. Central Standard Time (CST) on October 11, 2006, at the Clairemont Inn and Meeting Center located at 2520 West Washington Street, West Bend, Wisconsin 53095. The public scoping meeting will be held from 4 p.m. until 8 p.m. CST on this same date at this same location. The second governmental agency scoping meeting will be held from 10 a.m. until 12 p.m. CST on October 19, 2006, at West Bend Municipal Airport, EAA Chapter 1158 Building, 310 Aerial Drive, West Bend, WI, 53095.

Comments and suggestions are invited from Federal, State, local agencies, other interested parties, and the general public to ensure that the full range of issues related to the proposed improvements are addressed and all substantive issues are identified. Copies of scoping documentation providing additional detail can be obtained by contacting the FAA representative at the address provided, above. Written comments and suggestions may be mailed to the FAA informational contact listed above and must be postmarked no later than November 13, 2006.

Questions may also be directed to the FAA informational contact listed above.

Issued in Minneapolis, Minnesota, on August 25, 2006.

Robert A. Huber,

Manager, Minneapolis Airports District Office, FAA, Great Lakes Region.

[FR Doc. 06–7460 Filed 9–5–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–26]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 26, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2006–25466] by any of the following methods:

Web Site: http://dms.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

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.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 30, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25466.

Petitioner: Southwest Airlines Company.

Section of 14 CFR Affected: 14 CFR 121.391(a) and 121.393(b).

Description of Relief Sought: To permit the Southwest Airlines Company to reduce the number of required flight attendants onboard during the boarding and deplaning of passengers at intermediate stops. During the boarding process at intermediate stops, the petitioner is requesting to substitute a pilot qualified in emergency evacuation procedures for the forward flight attendant. During the deplaning process at intermediate stops, the petitioner is requesting to allow a reduced number (one) of flight attendants in the cabin.

[FR Doc. E6–14734 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2006–29]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 26, 2006.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2006–25568 by any of the following methods:

- *Web Site: http://dms.dot.gov.*

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano (770–703–6064), Small Airplane Directorate (ACE–111), Federal Aviation Administration, 901 Locust, Room 301, Kansas City, MO 64106; or John Linsenmeyer (202–267–5174), Office of Rulemaking (ARM–1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 29, 2006.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2006–25568.

Petitioner: Diamond Aircraft.

Sections of 14 CFR Affected: 14 CFR 23.1419(a).

Description of Relief Sought: To allow certification of the Diamond DA–42 aircraft without meeting the 61 knot stall speed requirement in § 23.1419(a). Diamond states that the Model DA–42 has compensating factors listed in paragraph 12 of Advisory Circular 23.1419–2C, dated July 21, 2004, and that these factors should apply to

multiengine airplanes as well as single engine airplanes.

[FR Doc. E6–14735 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2006–24037]

Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute, and New Freedom Programs: Coordinated Planning Guidance for FY 2007 and Proposed Circulars

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Guidance for FY 2007 implementation; notice of availability of proposed circulars.

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its Web site, proposed guidance in the form of circulars to assist grantees in implementing the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC), and New Freedom Programs beginning in FY 2007. By this notice, FTA invites public comment on the proposed circulars for these programs. This notice also includes guidance for FY 2007 implementation for the coordinated planning process.

DATES: Comments should be submitted by November 6, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [FTA–2006-24037] by any of the following methods:

1. Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

2. *Fax:* 202–493–2251.

3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–401, Washington, DC 20590–0001.

4. *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.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2006–24037) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to *http://dms.dot.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.* Docket: For access to the docket to read background documents and comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Henrika Buchanan-Smith or Bryna Helfer, Office of Program Management, Federal Transit Administration, 400 Seventh Street SW., Room 9114, Washington, DC, 20590, phone: (202) 366–4020, fax: (202) 366–7951, or e-mail, *Henrika.Buchanan-Smith@dot.gov; Bryna.Helfer@dot.gov;* or Bonnie Graves, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Room 9316, Washington, DC, 20590, phone: (202) 366–4011, fax: (202) 366–3809, or e-mail, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Overview

First, this notice establishes program guidance on how to implement the new coordinated public transit-human services transportation planning requirements for fiscal year 2007 for the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC), and New Freedom programs. These requirements are based on provisions in the statute as well as issues raised and commented on during the public comment period. The March 15, 2006, **Federal Register** notice provided interim guidance for implementing the Section 5310, JARC and New Freedom programs for fiscal year 2006.

Second, this notice provides summaries of the proposed Section 5310, JARC and New Freedom program circulars on which FTA seeks comment, and responds to comments received in response to the March 15, 2006, **Federal Register** notice. These programs are affected by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59), signed into law on August 10, 2005. The Section 5310 program provides funding, allocated by a formula, to States for capital projects to assist in meeting the transportation needs of older adults and persons with disabilities. The States administer this program. The current Section 5310 circular, developed in 1998, needs to be updated to reflect changes in the law. The JARC program was authorized as a discretionary program under the Transportation Equity Act for the 21st Century (TEA–21, Pub. L. 105–178, June 9, 1998), and changed to a formula program under SAFETEA–LU. The JARC program provides formula funding to States and designated recipients to support the development and maintenance of job access projects designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment. The JARC program also supports reverse commute projects designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities. The New Freedom program is newly established in SAFETEA–LU. The purpose of the New Freedom program is to provide new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

FTA conducted extensive outreach to develop these proposed circulars. First, FTA held initial listening sessions in Washington, DC in September, 2005. Then, FTA requested comments related to the Section 5310, JARC and New Freedom programs in a notice published

on November 30, 2005 (70 FR 71950), and held listening sessions in five cities around the country. Subsequent to that notice, FTA published in the **Federal Register** on March 15, 2006 (71 FR 13456), proposed strategies for implementing these programs and requested comments on those strategies. In addition, FTA conducted an all-day public meeting on March 23, 2006, and held a number of meetings and teleconferences with stakeholders. To ensure that we heard from a broad range of stakeholders and interested parties we extended the comment period of the March 15, 2006, **Federal Register** notice through May 22, 2006. FTA received more than 200 comments from State departments of transportation, trade associations, public and private providers of transportation services, metropolitan planning organizations (MPOs), individuals and advocates.

This document does not include the proposed circulars; electronic versions of the circulars may be found on the docket, at *http://dms.dot.gov,* docket number FTA–2006–24037, or on FTA's Web site, at *http://www.fta.dot.gov.* Paper copies of the circulars may be obtained by contacting FTA's Administrative Services Help Desk, at (202) 366–4865.

FTA seeks comment on these proposed circulars.

II. Guidance for the Coordinated Planning Process for FY 2007

SAFETEA–LU requires that projects selected for funding be derived from a coordinated public transit-human services transportation plan ("coordinated plan") beginning in FY 2006 for JARC and FY 2007 for Section 5310 and New Freedom. Based upon comments received from the public, FTA establishes the requirements for implementing these provisions for FY 2007 program participants below.

A number of commenters requested a phased-in approach for building a coordinated plan. Many had concerns that a coordinated plan could take significant time to develop, and asked whether planning agencies could "show progress" toward a fully coordinated plan, or simply insert an addendum to update an existing plan, to demonstrate compliance for FY 2007. Some States already started their FY 2007 selection process for Section 5310 funds, and expressed concern that award of those funds could be delayed if they had to go back and create new coordinated plans. Finally, some commenters, responding to FTA's March 15, 2006, proposal that existing JARC plans "may satisfy the coordinated planning requirement for FY 2006" asked FTA to affirmatively adopt the position that any JARC plan found sufficient under the FY 2005 requirements will be presumed sufficient for FY 2006.

In response, FTA first notes that projects selected for FY 2007 must be derived from a coordinated plan. FTA agrees with some of the commenters and will consider plans developed before the issuance of final program circulars to be an acceptable basis for project selection if they meet minimum criteria. Plans for FY 2007 should include: (1) An assessment of available services; (2) an assessment of needs; and (3) strategies to address gaps for target populations. FTA recognizes that initial plans may be less complex in one or more of these elements than a plan developed after the local coordinated planning process is more mature. Addendums to existing plans to include these elements will also be sufficient for FY 2007. Plans must be developed in good faith in coordination with appropriate planning partners and with opportunities for public participation. This good faith effort should be documented. JARC plans found sufficient under FY 2005 requirements are considered sufficient for FY 2006; plans for FY 2007 should be developed in good faith with planning partners and include the elements discussed above. Full implementation of the coordinated planning requirements will take effect for projects funded in FY 2008.

FTA recognizes the importance of local flexibility in developing plans for human service transportation and strongly supports communities building on existing assessments, plans, and action items. In some cases, formulation of these assessments, plans and actions may have taken place through, or in coordination with, the applicable metropolitan or statewide planning program. To that end, and as appropriate, FTA encourages consistency between these various planning activities, including public outreach and participation. FTA encourages communities to consider inclusion of new partners, new outreach strategies, and new activities related to the targeted programs and populations.

III. Chapter-by-Chapter Analysis

All three circulars generally follow the same format. Where possible, this notice discusses the chapters in general terms. Where the chapters vary significantly, as in Chapters III and IV, the discussion is specific to each program. This section addresses public comments received in response to the March 15, 2006, notice.

A few commenters thought the proposed guidance was "too prescriptive;" however, many commenters commended FTA for its willingness to be flexible in its approach and encouraged FTA to permit as much flexibility as possible at the local level in implementing these programs. FTA believes these proposed circulars provide the flexibility requested while allowing for consistent implementation that will meet the goals of the Federal programs.

A. Chapter I—Introduction and Background

Chapter I is an introductory chapter in all three circulars. This chapter covers general information about FTA and how to contact us, briefly reviews the authorizing legislation for the specific program (*i.e.*, Section 5310, JARC, or New Freedom), provides information about *Grants.gov,* includes definitions applicable to the specific program and provides a brief program history. During our preliminary outreach efforts, FTA did not receive any comments on the information found in Chapter I.

B. Chapter II—Program Overview

Chapter II provides more detail about the programs. This chapter starts with the statutory authority for the specific program, including the Congressionally authorized amount of funding and how the funds are apportioned. The chapter then discusses the goals of the program, followed by the State or recipient's role and FTA's role in program administration. There is a brief overview of how the specific program relates to other FTA programs, and an overview of coordination with other Federal programs through the Federal Interagency Coordinating Council on Access and Mobility. Since this is an "overview" chapter, the substance is covered in more detail in later chapters. Therefore, comments relating to information in Chapter II will be discussed in those chapters.

C. Chapter III—General Program Information

Due to the differences in program requirements, the discussion of this chapter is divided by program.

1. Chapter III—Section 5310

FTA first notes that there is an existing Section 5310 Circular, 9070.1E, issued in October, 1998. The final circular, when adopted, will supersede that circular. The proposed circular incorporates changes made to the program as a result of SAFETEA–LU. Significantly, SAFETEA–LU permits the use of up to 10% of Section 5310 funding for expenses related to program administration, planning, and technical

assistance (consistent with FTA's longstanding administrative practice). The law increases coordination requirements and allows the local funding share to include amounts available for transportation from other non-DOT Federal agencies, as well as Federal lands highway funding. SAFETEA–LU also establishes a pilot program that allows seven States to use up to 33% of their Section 5310 funds for operating expenses. FTA issued general guidance for the pilot program in a **Federal Register** notice (70 FR 69201, Nov. 14, 2005) and announced the States selected to participate in a later **Federal Register** notice (71 FR 59101, Feb. 3, 2006). The pilot program is not included in the proposed circular.

Chapter III addresses State agency designation, apportionment of Section 5310 funds, when the funds are available to the States, under what circumstances funds may be transferred, consolidation of grants to insular areas, who is an eligible subrecipient, administrative expenses, eligible capital expenses, and Federal/local match requirements. This information compares to information found in Chapter II of the existing circular.

The sections on State agency designation, apportionment of Section 5310 funds, and consolidation of grants to insular areas remain unchanged from the existing Section 5310 circular. FTA proposes that Section 5310 funds will now be available for obligation for the year of apportionment plus two years, instead of being available only in the year of apportionment. Funds may be transferred to Section 5307 (Urbanized Area Formula Grant) or Section 5311 (Other Than Urbanized Area Formula Grant) program accounts to ease overall program administration; however, funds must be used for projects eligible and selected under Section 5310. Because the funds must be used only for Section 5310 projects, funds will maintain their period of availability under Section 5310. Flexible Federal highway program funds transferred to Section 5310 will also be available for the year of transfer plus two years after the year of transfer.

The current circular allows States to use up to $25,000 or 10% of the State's fiscal year apportionment for administrative costs, whichever is greater, and requires a 20% local share. SAFETEA–LU provides that not more than 10% of Section 5310 funds may be used to administer, plan, and provide technical assistance for funded projects. FTA no longer requires a local share for the administrative funds. The circular provides guidance on how a State may accumulate administrative funds over time for a special administrative need in a subsequent year, as long as the funds are used in the year of apportionment plus two years.

FTA proposes that eligible capital expenses would remain substantially the same as in the existing circular, with the addition of mobility management activities as eligible expenses. The list of eligible activities is illustrative and not exhaustive.

FTA proposes to require compliance with FTA's "Capital Leases" regulation, 49 CFR part 639, for leases of capital equipment and facilities financed under the Section 5310 program. When FTA Circular 9070.1E was published in October 1998, FTA's Capital Leases regulation had not been promulgated, but TEA–21 extended cost evaluation regulations to all FTA assisted capital leases. Thus, FTA could only advise States to treat the FTA Capital Leases regulation as "useful guidelines." By December 10, 1998, FTA did promulgate its Capital Lease regulation covering all FTA programs. Consequently, we propose requiring compliance with those regulations. However, we are seeking comments about the implications of doing so and are interested in how those regulations would affect State leasing practices.

Section 5310 projects selected for funding must be derived from a coordinated plan (see Chapter V). Under Federal/local matching requirements, local share may now be derived from other non-DOT Federal programs that are eligible to be expended for transportation, as well as Federal lands highway funding. Examples of such Federal funding include, but are not limited to the Administration on Aging, Medicaid, Temporary Assistance for Needy Families, and Head Start.

One commenter suggested that Section 5310 should be treated as a formula allocation to urbanized areas, instead of having to go through the State DOT, and that the State DOT should continue to administer the rural and small urbanized Section 5310 program. Section 5310 authorizes the Secretary to make grants to States and local governmental authorities under this program. However, unlike JARC and New Freedom, SAFETEA–LU established the State as the recipient for all funds appropriated under Section 5310. FTA makes grants to local governmental authorities for the special needs of elderly individuals and individuals with disabilities under other FTA programs, such as the urbanized area formula program. The statute requires the Secretary to apportion the amounts made available for Section 5310 under a formula that considers the number of elderly individuals and individuals with disabilities in each State. States then determine how to allocate the available funds.

One commenter requested that FTA permit private for-profit bus companies to receive Section 5310 monies. SAFETEA–LU mandates that recipients and subrecipients be one of the following: States, local governmental authorities, or private non-profit agencies. Private for-profit operators are not eligible to receive these funds as subrecipients. For-profit companies are encouraged to participate in the coordinated planning process, however, as local areas may identify ways in which private companies may be able to meet community transportation needs, such as through purchase of service arrangements, an eligible capital expense under the program.

One commenter recommended that Section 5310 funds should not be used for medical assistance transportation. The Section 5310 program funds public transportation capital projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities, including medical transportation. States may fund any eligible subrecipient or project.

2. Chapter III—JARC and New Freedom

The JARC and New Freedom programs have similar statutory requirements, so Chapter III, with the exception of Eligible Activities, is the same or similar for each circular. This chapter covers recipient designation, including designation in urbanized areas where there are multiple recipients; the role of the designated recipient; eligible subrecipients; apportionment, availability and transfer of funds; consolidation of grants to insular areas; recipient administrative expenses; eligible activities; and Federal/local matching requirements.

a. Recipient Designation

FTA sought comment on our proposed strategy that the designated recipient for JARC and New Freedom would not have to be the same as the Section 5307 designated recipient. We made this suggestion primarily as a means to resolve any perceived "conflict of interest" in the competitive selection process (discussed in Chapter IV).

FTA received a wide range of comments on this proposal. Many commenters felt that the Section 5307 recipient should be the recipient for JARC and New Freedom program funds. Some commenters thought the MPO would make a good designated recipient for these funds, while still others thought the MPO was not equipped to be the designated recipient. (FTA notes

that the MPO is the designated recipient for Section 5307 in some urbanized areas). One commenter noted that the current planning regulations require MPOs to rank, evaluate, and select all regional transportation projects that use Federal transportation funds, therefore, the MPO has significant oversight over the planning and programming process, regardless of who the designated recipient is.

In response, FTA proposes that the designated recipient for JARC and/or New Freedom in urbanized areas over 200,000 in population may be the same as the designated recipient for Section 5307 funds; however, it does not have to be the same designated recipient. The MPO, State, or another public agency may be a preferred choice based on local circumstances. The designation of a recipient should be made by the governor in consultation with responsible local officials and publicly owned operators of public transportation, as required in Section 5307(a)(2). The recipient for JARC and New Freedom funds will apply to FTA for these funds on behalf of subrecipients within the recipient's area. Regardless of whether the JARC and New Freedom recipient is the same as or different than the Section 5307 designated recipient, the governor shall issue new designation of JARC and New Freedom recipient letters. Designations remain in effect until changed by the governor by official notice of redesignation to the appropriate FTA Regional Administrator.

In urbanized areas with populations less than 200,000 and in other than urbanized areas, the State is the designated recipient for JARC and New Freedom funds. The governor designates a State agency responsible for administering the funds and notifies the appropriate FTA regional office in writing of that designation. The governor may designate the State agency receiving Other Than Urbanized Area formula funds (Section 5311) and/or Section 5310 funds to be the JARC and/or New Freedom recipient, or the governor may designate a different agency.

A number of commenters had questions about urbanized areas with more than one designated recipient, and urbanized areas that cross State lines. Nothing precludes the designation of multiple designated recipients. When more than one recipient is designated for a single large urbanized area, the designated recipients must agree on how to divide the single apportionment to the urbanized area and notify FTA annually of the division and the geographic area each recipient will be responsible for managing. For multi-State urbanized areas of less than 200,000 in population, the designated recipient for each State is responsible for that State's portion.

Some commenters asked FTA to clarify the role of the designated recipient in the coordinated planning process (discussed further in Chapter V). FTA proposes that the designated recipient is not directly responsible for developing the coordinated plan, but is responsible for certifying that the projects funded are derived from a coordinated plan, developed in accordance with statutory requirements. The designated recipient or another organization may take the lead in developing the coordinated plan.

b. Apportionment, Availability and Transfer of Funds

Commenters had questions regarding apportionment, availability, and transfer of funds. Specifically, people asked about how geographic boundaries for large urbanized areas are determined, how the formula program works, why some areas that received JARC funds in the past have experienced reductions in funding levels, and why New Freedom funds cannot be transferred from one population area (such as rural) to another population area (such as small urbanized) within a State, since such transfer is permitted under the JARC program.

For funding purposes, urbanized area boundaries are those defined by the U.S. Census Bureau based on the 2000 Census. The Census Bureau, during the decennial census, draws urbanized area boundaries and makes that information available to those areas. For coordinated planning purposes, the decision as to the boundaries of the local planning areas should be made in consultation with the State, designated recipients, and/or the MPO (see Chapter V).

SAFETEA–LU apportions funds for JARC and New Freedom based on a formula that accounts for the number of eligible low-income and welfare recipients (JARC) or individuals with disabilities (New Freedom) in a particular area. For example, if the number of individuals with disabilities over age 5 in a large urbanized area with a population of 200,000 or more equals 5% of the number of individuals with disabilities over age 5 in all such urbanized areas, that urbanized area will receive 5% of the New Freedom funds available for large urbanized areas. Similarly, if the number of low-income individuals and welfare recipients in the rural areas of a State equals 4% of the number of low-income individuals and welfare recipients in all rural areas nationwide, that State will receive 4% of the JARC funds available for rural areas. The annual apportionment is published in the **Federal Register** following the enactment of the annual DOT appropriations act.

Under Section 3037 of TEA–21, JARC projects were selected through a national competition based on criteria specified in the statute. In FY 2000, Congress began designating, in the conference reports accompanying the annual appropriations acts, specific projects and recipients to receive JARC funding. In FY 2005, all JARC funds were allocated to such designated projects and recipients. With the SAFETEA–LU mandate that funds be distributed based on a formula, twenty-three States and the District of Columbia experienced a reduction in funding. Thirty-two States and territories experienced an increase in funding, including seventeen States and territories that did not receive JARC funding in FY 2005. Although SAFETEA–LU repealed Section 3037 of TEA–21 and substituted the new provisions of 49 U.S.C. 5316, those projects designated by Congress under Section 3037, and not yet obligated, remain available to the project. These funds must be obligated under the terms and conditions of Section 3037.

The formula-based JARC program is intended to provide an equitable and stable funding distribution to States and communities. FTA continues to provide maximum flexibility for communities to design plans and projects to meet the transportation needs of low-income individuals and welfare recipients. The process for preparing coordinated plans should be consistent with metropolitan and statewide transportation planning processes.

New Freedom funds cannot be transferred from one population area (such as rural) to another population area (such as small urbanized) within a State. While such a transfer provision is statutorily permitted under the JARC program, this provision is not included in the New Freedom program. Therefore, FTA cannot allow this transfer of funds. Further, funds may not be transferred between the JARC and New Freedom programs; funds must be spent for the program for which they were apportioned except in insular areas. States may, however, transfer JARC and New Freedom funds to Section 5307 or Section 5311(c) to ease program administration, as long as the transferred funds are used for JARC or New Freedom projects, respectively. Transfer requests must be submitted to the appropriate FTA Regional Administrator in writing.

Finally, funds are available for the year of apportionment plus two years. Therefore, if funds cannot be obligated in a grant during the year they are apportioned, they may be carried over for up to two years. Funds not obligated during this period will lapse and be reapportioned by FTA.

c. Recipient Expenses (10%) for Administration, Planning, and Technical Assistance

FTA received comments concerning the use of up to 10% of program funds available for the administration, planning, and technical assistance of Section 5310, JARC and New Freedom programs. These funds may be used directly by the designated recipient or they may be passed through to subrecipients for these purposes. For example, the designated recipient may award grants to local areas to support the development of the coordinated plan. The competitive selection process is part of "administering" the programs and, therefore, these funds may be used to conduct the competitive selection process. FTA also notes that non-emergency human services transportation planning is an eligible activity under Sections 5303 and 5304, metropolitan and statewide planning, respectively. Accordingly, local officials could propose coordination planning activities such as market research and service assessment to the State and/or MPO for inclusion in their transportation planning work programs.

Several commenters expressed concern that 10% of the amount apportioned may not be sufficient to administer the program. FTA notes that there is no local match requirement for this funding, and proposes that recipients may "pool" the administrative funding available under Section 5310, JARC, and New Freedom in order to develop a single coordinated plan to meet the needs of persons with disabilities, older adults, and low-income individuals. Further, FTA treats the limitation on administrative funds as applicable to funds apportioned to recipients over time, not necessarily to the apportionment for a particular fiscal year. A recipient may accumulate the "entitlement" to administrative funds for the year of apportionment plus two years to augment the funds available for a special administrative need in a subsequent year.

Some commenters expressed interest in using "mobility management" funds to develop the coordinated plan. Mobility management is an eligible expense under Section 5310, JARC, and New Freedom, and includes project planning activities. However, as with all JARC and New Freedom projects, any planning project under mobility management must be derived from the coordinated plan and must be competitively selected. Therefore, mobility management funds may not be used to develop the required coordinated plan.

Finally, one commenter expressed a preference for being able to apply only for the 10% administration funds, and then amend grants later to fund project implementation, rather than funding the administration and planning under pre-award authority with reimbursement after total obligation. FTA agrees that designated recipients may apply for the administrative funds allowed under the program in advance of selecting projects in order to support the planning and selection process.

d. JARC Eligible Activities

SAFETEA–LU requires that JARC projects selected for funding be derived from a coordinated plan (see Chapter V) and that grants will be awarded on a competitive basis (see Chapter IV). Funds are available for capital, planning, and operating expenses that support the development and maintenance of transportation services designed to transport low-income individuals to and from jobs and activities related to their employment. The list of proposed eligible projects included in the circular is consistent with the use of funds described in FTA's April 8, 2002, **Federal Register** notice for JARC Program Grants (67 FR 16790). As requested by commenters, this list of eligible activities is illustrative, not exhaustive.

FTA sought comment on whether transit passes should be an eligible expense under JARC. Commenters generally agreed that purchase of passes, rather than simply the promotion of voucher programs, should be an eligible expense. FTA proposes, however, that the purchase of transit passes for use on fixed route or ADA paratransit is not an eligible expense. The purchase of transit passes does not meet the overall program objective of adding new and expanded transportation capacity to connect low-income persons to jobs and employment services. Because the amount of funding available for JARC is limited, FTA believes it is more appropriate to spend those limited dollars on increasing service capacity. Further, a number of Federal programs are available to pay for transit passes for low-income workers, including the Temporary Assistance for Needy Families (TANF) program and Workforce Investment Act funds. Promotion of transit pass programs, however, remains an eligible expense. FTA proposes that vouchers could be used to fund alternative transportation services, such as mileage reimbursement as part of a volunteer driver program, taxi trips, or trips provided by human service agencies.

FTA also sought comment on whether "non-traditional" public transportation options, including, but not limited to, car loan or ownership programs and shared-use station cars, should be eligible activities under the JARC program. Commenters generally support these options, but some expressed concern that it is difficult or impossible to monitor "shared-use" of cars purchased through car loan programs. Programs that support loans for the purchase of vehicles will continue to be eligible for JARC funding, as will transit-related bicycling facilities. Shared station cars—cars available for shared use and located at subway or other public transit stations—are not listed in the examples of eligible activities. While there may be limited circumstances when the provision of a shared station car might be appropriate to support access to short-term job related activities, such as interviews, FTA does not believe that purchase of shared station cars is generally appropriate to support daily commutes.

Commenters agreed with FTA's proposal that existing JARC projects would continue to be eligible for funding, and some thought it would be appropriate to prioritize continuing JARC projects for funding. FTA believes this should be a local decision made through the planning process.

Commenters suggested that telework expenses should be eligible for JARC. In response, FTA notes the purpose of the JARC program is to expand capacity of transit systems, and enable people to travel to their places of employment. Telework activities are not consistent with the overall objective of the program. Further, there are other Federal programs supporting telework activities, such as the Department of Education's Access to Telework program, which helps persons with disabilities have access to low-interest loans to purchase equipment to enable them to work from home.

e. New Freedom Eligible Activities

In the March 15, 2006, **Federal Register** notice, FTA proposed that "new public transportation services" and "public transportation alternatives beyond those required by the Americans with Disabilities Act (ADA)" be considered separate categories of service. Most commenters supported that interpretation of the statute. In addition, many commenters wanted FTA to encourage creative uses of these funds to remove barriers to people with

disabilities. FTA also received comments regarding the limited availability of funds and congressional intent for implementing this program. FTA therefore proposes that projects eligible for New Freedom funds will be those that are "new public transportation services that are beyond the ADA" and "new public transportation alternatives that are beyond the ADA." Projects that do not meet both criteria—new and beyond the ADA—are not eligible under the proposed guidance. Projects proposed by FTA as eligible in the March 15, 2006, notice that do not meet both criteria include existing paratransit enhancements and new or expanded fixed route service. FTA initially proposed including expansion of fixed route service as an eligible activity, especially in rural areas, because there are significant transit needs in some areas. Since this service is not beyond the ADA, it is not included as an eligible activity in the proposed guidance. FTA notes, however, that the Section 5311 program funding increased almost two-fold following the enactment of SAFETEA–LU, so those communities have an alternative funding source to meet those needs.

In the March 15, 2006, **Federal Register** notice, FTA also proposed that "new" service would be limited to those projects not already included in a Transportation Improvement Plan (TIP) or a State Transportation Improvement Plan (STIP) as of August 10, 2005, the date SAFETEA–LU was signed into law. FTA received mixed comments on this proposal, and some requested clarification. FTA proposes that a "new" service is any service or activity that was not operational on or before August 10, 2005, and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the TIP or STIP. In other words, if not for New Freedom funding, these projects would not have consideration for funding and proposed service or facility enhancements would not be available for individuals with disabilities. FTA notes that inclusion of projects in the metropolitan or statewide long-range transportation plans does not constitute a funding commitment. However, once a project is included in the TIP/STIP, it has an identified funding source. Therefore, FTA proposes that projects identified in a long-range metropolitan or statewide plan may be eligible for New Freedom funding, but not projects in the 4-year program period of the TIP/STIP. FTA proposes a maintenance of effort provision in the circular: recipients or subrecipients may not terminate paratransit enhancements or other services funded as of August 10, 2005, or remove facility improvements from the TIP/STIP in an effort to reintroduce the service as "new" and then receive New Freedom funds for those services.

Some commenters requested that specific types of projects should be eligible for New Freedom funding, including way-finding technology and one-stop service centers. FTA proposes that both of these projects could be eligible if included as part of the coordinated planning process. One-stop service centers may be eligible under mobility management activities. The list of eligible activities in the proposed circular is illustrative, not exhaustive.

FTA proposed in the March 15, 2006, **Federal Register** notice that administration of voucher and transit pass programs would be eligible expenses, but not the purchase of the vouchers themselves. Commenters generally agreed that purchase of passes, rather than simply the administration of voucher programs, should be an eligible expense. Some commenters offered the importance of using vouchers as an administrative mechanism to support volunteer driver and taxi programs. For this reason, FTA proposes that vouchers could be used to fund alternative transportation services, such as mileage reimbursement as part of a new volunteer driver program, or new trips provided by human service agencies. Because projects must be both new and beyond the ADA, and because of the limited funding available, FTA proposes that the purchase of transit passes for use on fixed route or ADA paratransit is not an eligible expense.

Some commenters disagreed with FTA's assessment that door-to-door paratransit service is not beyond the ADA. However, the ADA regulation requires "origin-to-destination" service and the preamble to the regulation states that the decision to provide curb-to-curb or door-to-door service is a local decision. 56 FR 45604; Sept. 6, 1991. In addition, guidance issued by the U.S. DOT on September 1, 2005, reiterated the "origin-to-destination" language and noted that, "service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service." Other commenters were concerned that door-through-door service creates liability for the paratransit operator. FTA does not propose that operators must provide door-through-door service; it is simply one option that is considered an eligible activity for New Freedom funds.

FTA received a few comments on its proposal to permit station improvements as eligible for New Freedom funding. Some commenters felt that because the amount of money available is limited, it would not be appropriate to use an entire year's apportionment on one project. This is a local decision. Another commenter felt that economies of scale could be realized if a second (redundant, not required) elevator were installed at the time of a planned station renovation. FTA proposes that New Freedom funds may be used to improve accessibility at existing transportation facilities, so long as the projects are clearly intended to remove barriers that would otherwise have remained, and are not projects that are part of an already planned station renovation or alteration. FTA agrees that installing redundant, not required accessibility improvements at the time of renovation may result in economies of scale and therefore proposes that these redundant improvements would be eligible for New Freedom funds.

One commenter asked FTA to clarify that a designated recipient's decision to fund pedestrian improvements near bus stops, such as curb cuts, would not obligate New Freedom or other transit funding to fund all such improvements. While New Freedom funds should not supplant other funding sources, this type of activity is eligible under New Freedom if an accessible path of travel has been identified as a barrier for using fixed route transportation. However, if Federal highways or other funds are available for pedestrian improvements, those funds should be used first. The decision to fund a particular pedestrian improvement with New Freedom funds does not shift the responsibility for such improvements to transit operators.

f. Federal/Local Match Requirements

A grant for a capital project under the Section 5310, JARC and New Freedom programs may not exceed 80% of the net cost of the project. A grant for operating costs under these programs may not exceed 50% of the net operating costs of the project. Finally, a grant for administrative expenses incurred by these programs (up to 10% of the annual apportionment), may be fully funded by FTA. The proposed circular lists the potential sources of local funding match, including other Federal programs that provide funding for transportation. The sliding scale match available for Section 5310 (related to States with large Federal land areas) does not apply to the JARC or New Freedom program funds. As we stated in the March 15, 2006, notice, fare box revenue generally must be subtracted from gross project costs and is not eligible to be used as local funding match.

D. Chapter IV—Program Development

Due to the differences in program requirements, the discussion of this chapter is divided by program.

1. Chapter IV—Section 5310

Chapter IV provides an overview of planning requirements (described in further detail in Chapter V); describes the program of projects (POP), including the approval of and revisions to the POP; and describes pre-award authority, labor protections, and when public hearings are required. This information compares to information found in Chapter III of the existing Section 5310 Circular 9070.1E.

FTA did not receive any substantive comments on the issues addressed in this chapter.

Note: coordinated planning comments are addressed in Chapter V.

Thus, FTA proposes only minor changes to this chapter. First, the planning requirements now reference the coordinated plan required under SAFETEA–LU. Second, the existing circular states that grants are awarded on a quarterly release cycle; the new circular reflects FTA's current commitment to promptly process grants upon receipt of a complete and acceptable grant application. Third, under "Revisions to Program of Projects," FTA proposes a new paragraph for when grant revisions need to be made in FTA's Transportation Electronic Award and Management (TEAM) system. And fourth, the "Public Hearing" section clarifies and provides the statutory authority regarding public hearing requirements.

2. Chapter IV—JARC and New Freedom

The JARC and New Freedom programs have the same statutory requirements for the areas covered by this chapter, so Chapter IV is the same for both circulars. This chapter provides a summary of the planning and coordination requirements (described in further detail in Chapter V); describes the competitive selection process and what constitutes a fair and equitable distribution of funds; describes the program of projects (POP), including approval of and revisions to the POP; and addresses certifications and assurances and pre-award authority.

This chapter proposes guidance on how a designated recipient should conduct the competitive selection process. Most of the comments FTA received on this topic related to which agency should be the designated recipient for JARC and New Freedom funds, discussed in Chapter III. A number of commenters continue to be concerned that a "conflict of interest" exists when the designated recipient both conducts the competitive selection process and competes for projects. FTA notes, however, that in large urbanized areas, the process must be conducted in cooperation with the MPO, which should provide some degree of assurance that any potential conflict of interest is thus mitigated. Also, FTA proposes that while the designated recipient is responsible for conducting the process, it may, if it chooses, establish alternative arrangements to administer and conduct the competitive selection process.

Some commenters requested that FTA require the proposed strategies FTA suggested for competitive selection rather than simply recommend them; others preferred that the strategies remain recommendations, allowing local designated recipients to determine the best way to conduct the competitive selection process. FTA agrees that the strategies should be suggestions only, in order to allow designated recipients the flexibility to determine what will work best in their community.

A number of commenters requested clarification of what is actually competed. The law requires that designated recipients and States conduct a "solicitation for applications for grants to the recipient and subrecipients under [the JARC and New Freedom programs]." 49 U.S.C. 5316(d), 49 U.S.C. 5317(d). Recipients and subrecipients seeking grants are required to submit an application to the designated recipient, which then evaluates and selects the final set of projects for funding. In the proposed circulars, FTA provides a number of examples that should help to clarify the competitive selection process. These examples support the concept that the competitive selection process is locally driven, taking into account local dynamics and funding levels.

Some commenters wondered if JARC and New Freedom projects could be multi-year projects, and if so, if there is a limitation on the duration of multi-year projects. FTA proposes that competition for projects be conducted annually or at intervals not to exceed two years. This proposal would permit the selection of multi-year projects as long as they are derived from the coordinated planning process.

Commenters were also concerned that the incumbent provider might have an advantage solely because it is the provider of services. Others wanted assurance that their presence at the coordinated planning table would not preclude them from competing for projects. In response, FTA proposes that the designated recipient will set the criteria for selection of projects, and a provider's participation in the local planning process will not preclude that provider from competing for projects.

A few commenters requested clarification on what constitutes a "fair and equitable" distribution of funds. FTA notes that equitable distribution refers to equal access to, and equal treatment by, a fair and open competitive process. The result of such a process may not be an "equal" allocation of resources among projects or communities. It is possible that some areas may not receive any funding at the conclusion of the competitive selection process. A successful competitive selection process will, however, minimize perceptions of unfairness in the allocation of program resources.

The rest of this chapter addresses the program of projects. The language is consistent with the proposed Section 5310 circular.

E. Chapter V—Coordinated Planning

The Section 5310, JARC, and New Freedom programs all require the development of a locally developed, coordinated public transit-human services transportation plan ("coordinated plan"). Each of the circulars for these three programs has the same requirements for coordinated planning; therefore, Chapter V is identical in all three circulars. This chapter includes the proposed definition of a coordinated plan, how a coordinated plan is developed, the level of public participation that is expected and strategies for inclusion, and the relationship of the coordinated plan to other planning processes.

Some commenters suggested that FTA's coordinated planning process would be stronger if the circulars were issued jointly with other Federal agencies such as the U.S. Department of Health and Human Services. At the very least, suggested one commenter, acknowledgment and support from those Federal agencies whose involvement is deemed critical to the success of a coordinated planning process should be included.

As stated in our March 15, 2006, notice, FTA is committed to working with our Federal partners through the United We Ride initiative and the Federal Interagency Coordinating Council on Access and Mobility (CCAM) to encourage agencies that receive Federal funding to participate in the coordinated planning process. In the 2005 Report to the President, CCAM outlined five recommendations for future action related to coordinated human services transportation. These

recommendations include two policy statements currently under review by CCAM members related to coordinated planning and vehicle sharing. Once approved and adopted by CCAM, CCAM will work with each member Department to implement the policy statements that build participation in coordinated human transportation services at the local level. In addition to these efforts, FTA encourages State DOT offices to work closely with their partner agencies and local governmental officials to educate policy makers about the importance of partnering with human services transportation programs and the opportunities that are available when building a coordinated system.

Some commenters thought the definition of a coordinated plan, proposed in the **Federal Register** notice of March 15, 2006, was too expansive. As a result, FTA proposes to modify the definition of a coordinated plan as follows: "a coordinated public transit-human services transportation plan identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation."

FTA received comments both in support of and in opposition to the development of one plan or multiple plans for separate populations. The intent of building a coordinated plan is to build efficiencies in order to enhance transportation services; therefore, FTA proposes that communities will develop one coordinated plan. The benefit of enhancing coordinated transportation service systems is to break down the "silo" transportation systems that often only address the transportation needs of one specific group of riders. Coordination can help provide more rides with the same dollars by minimizing service duplication and filling service gaps. SAFETEA–LU provides the "table" for all stakeholders, including services funded through other sources, to build a coordinated plan and ultimately a service delivery system that addresses the needs of target populations. While there may be some unique needs of each target population, the functional transportation needs of the three populations are often more similar than dissimilar. Even when unique needs exist, they are often associated with at least one or more subsets of the population. If a community does not intend to seek funding for a particular program, (Section 5310, JARC or New Freedom), then the community does not need to include those projects in its coordinated plan.

Many commenters stated the elements of a coordinated plan and the requirements for developing the plan should be based on the size of a community and should remain flexible at the local level. In response to these comments, FTA proposes a variety of approaches for the development of a coordinated plan that lend themselves to local scenarios. FTA also recognizes the importance of local flexibility in developing plans for human service transportation and strongly supports communities building on existing assessments, plans and action items. However, all plans must meet the new requirements, and therefore communities may need to consider inclusion of new partners, new outreach strategies, and new activities related to the targeted programs and populations.

Commenters also expressed support for and opposition to the specific elements proposed for the coordinated plan. In response to comments, FTA proposes that a coordinated plan includes the following elements:

(a) An assessment of available services that identifies current providers (public, private, and nonprofit);

(b) An assessment of transportation needs for individuals with disabilities, older adults, and people with low incomes. This assessment may be based on the experiences and perceptions of the planning partners or on more sophisticated data collection efforts, and gaps in service;

(c) Strategies and/or activities to address the identified gaps and achieve efficiencies in service delivery; and

(d) Relative priorities for implementation based on resources, time, and feasibility for implementing specific strategies/activities identified.

Local plans may be developed on a local, regional, or statewide level. The decision as to the boundaries of the local planning areas should be made in consultation with the State, designated recipients, and/or the MPO. Commenters sought clarification of which agency should be the lead agency for developing the plan. Some commenters asked FTA to clarify the role of the designated recipient in the coordinated planning process. FTA proposes that the agency leading the planning process would be decided locally; the designated recipient or an agency or organization other than the designated recipient may take the lead in developing the coordinated plan. The designated recipient is not directly responsible for developing the coordinated plan, but is responsible for certifying that projects were derived from a coordinated plan, developed in accordance with statutory requirements.

Some commenters thought the proposed coordinated planning activities outlined in the March 15, 2006, notice would require additional resources beyond those available through the 10% of administrative funds available from the recipient's apportionment. Several of the strategies outlined in Chapter V offer approaches that may be done with a range of resources based on local interest and need. Further, FTA proposes that administrative funds for the coordination strategies discussed in Chapter V may be supplemented with Sections 5303 and 5304 Metropolitan Planning and Statewide Planning funds, as well as, Section 5307 formula funds and administrative funding available under Section 5311.

Several commenters thought the proposed guidance for prioritizing services discussed in the March 15, 2006, notice required further consideration and clarification. FTA suggests in the proposed circulars that communities will develop priorities for implementation based on resources, time, and feasibility for implementing specific strategies/activities within the plan. Also, these projects will need to be included in the applicable long-range plans and TIPs/STIPs to be eligible to receive funding under Section 5310, JARC and New Freedom. Therefore, FTA encourages coordination and consistency between local coordination planning and metropolitan/statewide planning processes.

A number of commenters expressed the importance of full participation from public and private transportation providers, human service providers, and individuals with disabilities, older adults, and people with low incomes. FTA's suggested list of diverse participants, however, recognizes that stakeholders will vary by community, and therefore requires, at a minimum, evidence of outreach to stakeholders, including customers of transportation services (e.g., people with disabilities, older adults, individuals with low incomes). FTA also clarifies that participation in the planning process will not bar providers (public or private) from bidding to provide services identified in the coordinated planning process. FTA also notes that SAFETEA–LU expanded the range of public participation and stakeholder consultation requirements of metropolitan and statewide transportation planning—both in the activities to be performed and in the stakeholder groups to be involved. For this reason, FTA encourages consistency

between the local coordination planning process and the applicable metropolitan or statewide planning process.

Since Section 5310 projects are managed and selected at the State level, several commenters requested further clarification on integrating the needs for the Section 5310 program into the coordinated plan in urbanized areas. In this case, communities applying for Section 5310 funding from the State will have to demonstrate that the proposed activities are derived from a coordinated plan.

Commenters were also interested in how they could participate in the adoption of the plan. FTA proposes that as a part of the coordinated planning process, participants should identify the process for adoption of the plan at the local level. This lends itself to local flexibility and decision making. In reference to comments regarding the need for increased oversight and evaluation of plans, FTA will not formally review and approve plans. However, the designated recipient's grant application will require documentation of the plan from which each project listed is derived, including the lead agency, the date of adoption of the plan, or other appropriate identifying information.

FTA received comments on the relationship between the coordinated planning process and other transportation planning processes. FTA proposes that the coordinated plan can be developed either separately from the metropolitan and statewide transportation planning processes and then incorporated into the broader plans, or be developed as a part of the metropolitan and statewide transportation planning processes. In either case, the MPO or State is responsible for incorporating the projects selected from a coordinated plan into the metropolitan and statewide transportation plans, TIPs, and STIPs. States with coordination programs may wish to incorporate the needs and strategies identified in local coordinated plans into statewide coordination plans. FTA proposes that, depending upon the structure established by local decision-makers, the coordinated planning process may or may not become an integral part of the metropolitan or statewide transportation planning processes. Regardless of who leads the local coordination planning process, FTA encourages a basic level of coordination and general consistency between these planning processes.

Most commenters were in agreement with the cycle and duration of the coordinated plan presented in the March 15, 2006, notice. However, FTA has revised this section somewhat, and proposes that communities and States may update the coordinated plan to align with the competitive selection process based on needs identified at the local level. This allows communities and States to set up a cycle that is conducive to their own planning and competitive selection process.

Commenters requested clarification about the certification of the local planning process. As previously stated, the designated recipient's grant application will require documentation of the plan from which each project listed is derived, including the lead agency, the date of adoption of the plan, or other identifying information.

F. Chapter VI—Program Management and Administrative Requirements

Chapter VI provides more details for States and direct recipients on how to manage the administrative aspects of the three grant programs, and is similar for all three programs. FTA notes that Chapter VI in the proposed circulars is largely a reorganization of the Program Management chapter in the current Section 5310 Circular 9070.1E (Chapter V). The proposed chapter starts by noting that the basic grant management requirements for State and local governments are contained in the U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, and "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 CFR Part 19, which are collectively referred to as the "common grant rule." Chapter VI provides summary information about certain aspects of the common grant rule, and how management of those aspects may be applied to these three programs. Chapter VI also notes that more detailed information about general program and grant management is found in FTA Circular 5010.1C, "Grant Management Guidelines."

The common grant rule allows States to use slightly different standards for the establishment of equipment management, procurement, and financial management systems than are required for other FTA recipients. Therefore, throughout Chapter VI, distinctions are made between the requirements for States and other designated recipients. In addition, the proposed Section 5310 circular has a section on leasing vehicles that is specific to that program.

The general requirements of Chapter VI are common to all FTA programs, and FTA received few comments relating to this chapter. One commenter noted that there is confusion at the State level as to whether non-FTA funded rides "count" when determining vehicle use tests that allow for vehicle replacement, and whether State, local and Federally-funded rides should all be counted toward vehicle replacement. In response, FTA notes that useful life standards for vehicles are based upon age and mileage, not on the number of rides. All transit-related miles count toward the end of life requirement, and FTA assumes that all vehicle mileage has been accumulated in transit service. Further, FTA notes that States are permitted to establish their own useful life standards for vehicle replacement, use their own procedures to determine fair market value at the time of disposition, and develop their own policies and procedures for maintenance and replacement of vehicles.

Chapter VI describes Reporting Requirements for States and designated recipients. FTA is interested in capturing overall program measures to be used with the Government Performance Results Act and the Performance Assessment Rating Tool process for the U.S. Office of Management and Budget (OMB), and so is proposing program measures for each program, to be reported annually. These performance measures are different for each program.

FTA received a range of diverse comments relating to performance measures. While many commenters noted the importance of measurement, evaluation, and oversight, others said that measurements specific to performance evaluation should be determined at the local level. The Government Performance and Results Act of 1993 requires all Federal agencies to develop performance measures for each specific program based on Federal program goals and objectives. Therefore, while individual communities have the option to include evaluation strategies for their own activities, in response to public comment, FTA proposes specific performance measures for the Section 5310, JARC, and New Freedom programs. We seek comment on these proposals.

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. FTA has OMB approval numbers for current data collection requirements for JARC and

Section 5310, however, the data collection requirements could change if the performance measures are implemented as drafted in the proposed circulars. We invite comments to inform our next submissions to OMB, and invite comments on the reporting requirements for New Freedom.

G. Chapter VII—State and Program Management Plans

FTA requires States and designated recipients responsible for implementing the Section 5310, JARC, and New Freedom (and Section 5311) programs to document their approach to managing the programs. Chapter VII proposes guidance on how to create and use State Management Plans (for the State-managed aspects of the programs), and Program Management Plans (for designated recipient-managed aspects of the programs). The primary purposes of Management Plans are to serve as the basis for FTA management reviews of the program, and to provide public information on the administration of the programs. FTA notes that Chapter VII in the proposed circulars is largely a restatement of the State Management Plan chapter in the current Section 5310 Circular 9070.1E (Chapter VII). The proposed chapter includes FTA's intention to make designated recipients of the JARC and New Freedom programs subject to management reviews.

In all three program circulars, the first two parts of Chapter VII explain the general requirements and purpose of Management Plans. The third part, "Reviews," differs slightly among the programs. The Section 5310 circular discusses only State Management Reviews (as it is an entirely State-managed program), while the JARC and New Freedom circulars discuss reviews at both the State and designated recipient level. The Reviews part of Chapter VII is an addition to the current Section 5310 circular.

The fourth part of Chapter VII discusses the content of Management Plans. The suggested content of State and Program Management Plans is essentially identical in all three circulars, but the Section 5310 circular reflects the fact that Section 5310 is entirely State administered. Management Plans are to include a section on use of the 10% of the apportionment available for administration and technical assistance, and a description of how the State or designated recipient makes additional resources available to local areas.

The State Management Plan content for Section 5310 remains largely as it is written in the current circular. Two sections have been added regarding the use of the 10% for administration, planning and technical assistance, and transfer of funds, consistent with the sections in the new proposed circulars.

The final part of Chapter VII, which discusses revisions to the Management Plan, is the same for all three circulars, and mirrors the language in the existing Section 5310 circular.

FTA received only one comment on Chapter VII material, asking what type of oversight will be applied in areas with population under 200,000. In response, FTA notes that in areas under 200,000 in population, the programs are all exclusively State-managed. Therefore, the State Management Plan and State Management Review will be used for oversight in these areas.

H. Chapter VIII—Other Provisions

This chapter is an expansion of the current "Other Provisions" chapter in the existing Section 5310 circular, and is virtually the same for all three circulars. Chapter VIII summarizes a number of FTA-specific and other Federal requirements that FTA grantees are held to in addition to the program-specific requirements and guidance provided in these circulars. This chapter explains some of the most relevant requirements and provides citations to the actual statutory or regulatory text. Grantees should use this document in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" to assure that they have met all requirements. Grantees may contact FTA Regional Counsel for more detail about these requirements.

I. Appendices

The Appendices sections for the Section 5310, JARC, and New Freedom programs are intended as tools for developing a grant application. Appendix A specifically addresses steps and instructions for preparing a grant application, including pre-application and application stages. Appendix A also includes an application checklist and information for registering with the Electronic payment system (ECHO). Appendix B includes a sample program of projects. For the Section 5310 circular, Appendix C provides contact information for FTA's regional offices, and Appendix D provides technical assistance information. In the JARC and New Freedom circulars, Appendix C includes budget information and provides specific activity line item (ALI) codes for specific types of eligible costs (i.e., capital, operating, planning, etc.). A sample approved budget is included in Appendix D. Appendix E provides contact information for each of FTA's 10 regional offices.

Appendix D in Section 5310 and Appendix F in the JARC and New Freedom circulars list potential sources of technical assistance. A number of commenters identified a need to have technical assistance available to specific types of service providers, including public and private transportation providers, MPOs, and human service agencies. Commenters also expressed a need for technical assistance and training relative to the coordinated planning process. FTA supports a wide range of technical assistance and training initiatives that are available to service providers and members of the public. Each of the technical assistance activities is outlined in Appendix F.

Issued in Washington, DC, this 30th day of August, 2006.

James S. Simpson,

Administrator.

[FR Doc. E6–14733 Filed 9–5–06; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34921]

Intermountain Railroad LLC—Acquisition and Operation Exemption—Line of Wyoming and Colorado Railroad Company, Inc.

Intermountain Railroad LLC, (IMR),[1] a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a rail line from Wyoming and Colorado Railroad Company, Inc., extending between milepost 0.57 and approximately milepost 1.07, near Walcott, a distance of approximately 0.5 miles, in Carbon County, WY.

IMR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

IMR stated that the parties intended to consummate the transaction no earlier than on August 14, 2006 (the effective date of the exemption).

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance

[1] IMR is a wholly owned subsidiary of Intermountain Resources LLC that was formed to acquire and operate the subject line.

Docket No. 34921 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart Nicholson Graham LLP, 1601 K Street, NW., Washington, DC 20006–1600.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 28, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–14635 Filed 9–5–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Change of Notice of Funds Availability (NOFA) inviting applications for the FY 2007 Funding Round of the Community Development Financial Institutions (CDFI) Program.

Announcement Type: Change of certain dates and application submission information in the announcement of funding opportunity published on August 28, 2006.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Change of Application Deadlines: On August 28, 2006, the Community Development Financial Institutions Fund (the Fund) published the NOFA for the FY 2007 funding round of the CDFI Program (71 FR 50983). This notice announces the correction of two dates set forth in the NOFA:

(i) Section II.E (Matching Funds), subsection 2(b) of the NOFA (71 FR 50987) states: "A Category II/Core Applicant must demonstrate that it has eligible matching funds equal to no less than 100 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 5, 2006 and on or before the application deadline." The correct date is January 1, 2005, not January 5, 2006.

(ii) Section II.E (Matching Funds), subsection 5 of the NOFA (71 FR 50988) states: "In the case of item (i) of this paragraph, the Applicant must demonstrate that it has eligible matching funds equal to no less than 25 percent of the amount of the FA award requested in-hand or firmly committed, on or after January 1, 2006 and on or before the application deadline." The correct date is January 1, 2005, not January 1, 2006.

Change in Application and Submission Information: Section IV (Application and Submission Information), subsections A and B of the NOFA are incorrect. This notice replaces said subsections with the following language:

A. *Form of Application Submission:* Applicants may submit applications under this NOFA either (i) Through Grants.gov or (ii) in paper form. Applications sent by facsimile or other form will not be accepted.

B. *Grants.gov:* In compliance with Public Law 106–107 and Section 5(a) of the Federal Financial Assistance Management Improvement Act, the Fund is required to accept applications submitted through the Grants.gov electronic system. The Fund has posted to its Web site, at *http://www.cdfifund.gov*, instructions for accessing and submitting an application through Grants.gov. Applicants are encouraged to start the registration process now at *http://www.Grants.gov* as the process may take several weeks to fully complete. See the following link for information on getting started on Grants.gov: *http://grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf.*

All other information and requirements set forth in the August 28, 2006 NOFA for the FY 2007 Fund Round of the CDFI Program shall remain effective, as published.

Agency Contacts: The Fund will respond to questions and provide support concerning the NOFA and the funding application between the hours of 9 a.m. and 5 p.m. ET, starting the date of the publication of the NOFA through November 10, 2006. The Fund will not respond to questions or provide support concerning the application that are received after 5 p.m. ET on said dates, until after the respective funding application deadline. Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its Web site responses to questions of general applicability regarding the CDFI Program.

A. *Information Technology Support:* Technical support can be obtained by calling (202) 622–2455 or by e-mail at *ithelpdesk@cdfi.treas.gov.* People who have visual or mobility impairments that prevent them from creating an Investment Area map using the Fund's Web site should call (202) 622–2455 for assistance. These are not toll free numbers.

B. *Programmatic Support:* If you have any questions about the programmatic requirements of the NOFA, contact the Fund's Program office by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–6355, by facsimile at (202) 622–7754, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll-free numbers.

C. *Grants Management Support:* If you have any questions regarding the administrative requirements of the NOFA, including questions regarding submission requirements, contact the Fund's Grants Manager by e-mail at *grantsmanagement@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

D. *Compliance and Monitoring Support:* If you have any questions regarding the compliance requirements of the NOFA, including questions regarding performance on prior awards, contact the Fund's Compliance Manager by e-mail at *cme@cdfi.treas.gov,* by telephone at (202) 622–8226, by facsimile at (202) 622–6453, or by mail at CDFI Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. These are not toll free numbers.

E. *Legal Counsel Support:* If you have any questions or matters that you believe require response by the Fund's Office of Legal Counsel, please refer to the document titled "How to Request a Legal Review," found on the Fund's Web site at *http://www.cdfifund.gov.* Further, if you wish to review the Assistance Agreement form document from a prior funding round, you may find it posted on the Fund's Web site (please note that there may be revisions to the Assistance Agreement that will be used for Awardees under the NOFA and thus the sample document on the Fund's Web site is provided for illustrative purposes only and should not be relied on for purposes of the NOFA).

Information Sessions and Outreach: The Fund may conduct Information Sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the Fund's programs. For further information on the Fund's Information Sessions, dates and locations, or to register to attend an Information Session, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–9046.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: August 31, 2006.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. 06–7474 Filed 8–31–06; 4:12 pm]

BILLING CODE 4810–70–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is removing the name of one individual from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001. *Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.* The individual, Yusaf Ahmed Ali, was designated pursuant to Executive Order 13224 on November 7, 2001.

DATES: The removal of the individual from the list of Specially Designated Nationals and Blocked Persons whose property and interests in property have been blocked pursuant to Executive Order 13224 is effective as of August 24, 2006.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY IMFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13224.

One such additional person was designated by the Secretary of the Treasury on November 7, 2001. The Department of the Treasury's Office of Foreign Assets Control has determined that this individual no longer continues to meet the criteria for designation under the Order and is appropriate for removal from the list of Specially Designated Nationals and Blocked Persons.

The following designation is removed from the list of Specially Designated Nationals and Blocked Persons:

ALI, Yusaf Ahmed, Hallbybacken 15, Spanga 70, Sweden; *DOB:* 20 November 1974.

The removal of the individual's name from the list of Specially Designated Nationals and Blocked Persons is effective as of August 24, 2006. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: August 30, 2006.

Adam J. Szubin,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E6–14703 Filed 9–5–06; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–64–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–64–93 (TD 8611). Conduit Arrangements Regulations (§§ 1.881–4 and 1.6038A–3).

DATES: Written comments should be received on or before November 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Conduit Arrangements Regulations.

OMB Number: 1545–1440. *Regulation Project Number:* INTL–64–93.

Abstract: This regulation provides rules that permit the district director to recharacterize a financing arrangement as a conduit arrangement. The recharacterization will affect the amount of U.S. withholding tax due on financing transactions that are part of the financing arrangement. This regulation affects withholding agents and foreign investors who engage in multi-party financing arrangements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 10,000.

The following paragraph applies to all the collections of information covered by this notice:

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–14674 Filed 9–5–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
September 6, 2006

Part II

Environmental Protection Agency

40 CFR Parts 63, 264, and 266
NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors (Reconsideration); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63, 264 and 266

[EPA–HQ–OAR–2004–0022; FRL–8215–3]

RIN 2050–AG29

NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors (Reconsideration)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 12, 2005, EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for new and existing hazardous waste combustors. Subsequently, the Administrator received four petitions for reconsideration of the final rule. In this proposed rule, EPA is granting reconsideration of and requesting comment on several issues raised in the petitions of the Cement Kiln Recycling Coalition, the Coalition for Responsible Waste Incineration, and the Sierra Club. In addition, EPA is proposing several amendments and corrections to the final rule to clarify some compliance and monitoring issues raised by several entities affected by the final rule.

DATES: *Comments.* Written comments must be received by October 23, 2006.

Public Hearing. A public hearing will be held on September 21, 2006. For further information on the public hearing and requests to speak, see the **ADDRESSES** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0022, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* U.S. Postal Service, send comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).
- *Hand Delivery:* In person or by courier, deliver comments to: HQ EPA Docket Center (6102T), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies. We request that you also send a separate copy of each comment to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2004–0022. 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 *www.regulations.gov*, including any personal information provided, unless the comments include information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the following address: Ms. LaShan Haynes, RCRA Document Control Officer, EPA (Mail Code 5305W), Attention Docket ID No. EPA–HQ–OAR–2004–0022, 1200 Pennsylvania Avenue, Washington DC, 20460. Clearly mark the part or all of the information that you claim to be CBI. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* We also request that interested parties who would like information they previously submitted to EPA to be considered as part of this reconsideration action identify the relevant information by docket entry numbers and page numbers.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2004–0022, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The HQ EPA Docket Center telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. A reasonable fee may be charged for copying docket materials.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

Public Hearing. The public hearing will run from 9 a.m. to 5 p.m., Eastern standard time, and will be held at the Two Potomac Yard building, 2733 S. Crystal Drive, Arlington, Virginia, 22202. Persons interested in attending the hearing or wishing to present oral testimony should notify Mr. Frank Behan at least 2 days in advance of the public hearing (see **FOR FURTHER INFORMATION CONTACT** section of this preamble). The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this notice. If no one contacts Mr. Behan in advance of the hearing with a request to present oral testimony at the hearing, we will cancel the hearing. The record for this action will remain open for 30 days after the date of the hearing to accommodate submittal of information related to the public hearing.

FOR FURTHER INFORMATION CONTACT: For more information on this rulemaking, contact Frank Behan at (703) 308–8476, or *behan.frank@epa.gov*, Office of Solid Waste (MC: 5302W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

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

I. General Information

A. Does This Proposed Rule Apply to Me?

Categories and entities potentially affected by this action include:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry that combusts hazardous waste as defined in the final rule.	562211	4953	Incinerator, hazardous waste.
	327310	3241	Cement manufacturing, clinker production.
	327992	3295	Ground or treated mineral and earth manufacturing.
	325	28	Chemical Manufacturers.
	324	29	Petroleum Refiners.
	331	33	Primary Aluminum.
	333	38	Photographic equipment and supplies.
	488, 561, 562	49	Sanitary Services, N.E.C.
	421	50	Scrap and waste materials.
	422	51	Chemical and Allied Products, N.E.C.
	512, 541, 561, 812	73	Business Services, N.E.C.
	512, 514, 541, 711	89	Services, N.E.C.
	924	95	Air, Water and Solid Waste Management.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be impacted by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in 40 CFR 63.1200. 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.

B. How Do I Obtain a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the Worldwide Web (WWW). Following the Administrator's signature, a copy of this document will be posted on the WWW at *http://www.epa.gov/hwcmact*. This Web site also provides other information related to the NESHAP for hazardous waste combustors.

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

Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not

contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. Background

Section 112 of the CAA requires that we establish NESHAP for the control of hazardous air pollutants (HAP) from both new and existing major sources. Major sources of HAP are those stationary sources or groups of stationary sources that are located within a contiguous area under common control that emit or have the potential to emit considering controls, in the aggregate, 10 tons per year (tpy) or more of any one HAP or 25 tpy or more of any combination of HAP. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT (for Maximum Achievable Control Technology). See CAA section 112(d)(2).

The so-called MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (where there are 30 or more sources in a category or subcategory).

In developing MACT standards, we also must consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any health and environmental impacts, and energy requirements. See CAA section 112(d)(2). We call these standards beyond-the-floor standards.

We proposed NESHAP for hazardous waste combustors on April 20, 2004 (69 FR 21198), and we published the final rule on October 12, 2005 (70 FR 59402). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. We received over 75 public comment letters on the proposed hazardous waste combustor rule. Comments were submitted by industry trade associations, owners and operators of hazardous waste combustors, environmental groups, and State regulatory agencies and their representatives. We summarized the major public comments on the proposed rule and our responses to public comments in the preamble to the final rule and in a separate, supporting "response to comments" document. See 70 FR at 59426 and docket items EPA–HQ–OAR–2004–0022–0437 through 0445.

Following promulgation of the hazardous waste combustor final rule, the Administrator received four petitions for reconsideration, pursuant to section 307(d)(7)(B) of the CAA, from Ash Grove Cement Company, the Cement Kiln Recycling Coalition (CKRC), the Coalition for Responsible Waste Incineration (CRWI), and the Sierra Club.[1] Under this section of the CAA, the Administrator must initiate reconsideration proceedings with respect to provisions that are of central relevance to the rule at issue if the petitioner shows that it was impracticable to raise an objection to a rule within the public comment period or that the grounds for the objection arose after the public comment period but within the period for filing petitions for judicial review.

On March 23, 2006, EPA published a proposed rule granting reconsideration of one issue—the particulate matter (PM) standard for new cement kilns—raised in the petitions of Ash Grove Cement Company and CKRC. See 71 FR 14665. We intend to take final action on this reconsideration issue as expeditiously as possible.

III. Summary of This Action

In today's notice, we are granting reconsideration of certain issues raised by petitioners. We summarize below our responses to petitions for reconsideration and provide detailed discussions in Section IV of this preamble of the petitions we are granting. We also are today proposing other amendments to correct or clarify provisions of the final rule. See discussion in Section V of the preamble. We also are presenting revised pictorial time lines (from those provided in the final rule) that highlight various milestones of the MACT compliance process. See discussion in Section VI of the preamble. Finally, we are providing advance notice of technical corrections that we plan to promulgate when we take final action on the amendments proposed today. See discussion in Section VI below.

We are granting reconsideration of several issues (that are of central relevance to the rule's outcome) raised by Sierra Club, the Cement Kiln Recycling Coalition (CKRC),[2] and the Coalition for Responsible Waste Incineration (CRWI). Accordingly, we are requesting comment on specific provisions of Subpart EEE of 40 CFR part 63: (1) Subcategorization of liquid fuel boilers; (2) correcting total chlorine emissions data below 20 ppmv; (3) use of PS–11 as a reference to develop alarm set-point extrapolation procedures for particulate matter detection systems

[1] These petitions are included in the docket for this proposal. See items EPA–HQ–OAR–2004–0022–0516 thru 0519. EPA also received petitions from Ash Grove Cement Company and the CKRC, Continental Cement Company, and Giant Cement Holding, Inc. requesting that we stay the effective date of the particulate matter standard for new cement kilns. See items EPA–HQ–OAR–2004–0022–0521 and 0523. In a notice published on March 23, 2006, EPA granted a temporary three-month administrative stay while the particulate matter standard is under reconsideration. See 71 FR 14655. In addition, five petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia Circuit by the following entities: Ash Grove Cement Company, CKRC, CRWI, the Environmental Technology Council, and the Sierra Club.

[2] Ash Grove Cement Company also submitted to EPA a petition for reconsideration. Ash Grove Cement's petition incorporated by reference the petition of the CKRC.

(PMDS); (4) approach to identify the best performing single source when two or more sources are tied for the lowest aggregate SRE/feedrate score; (5) beyond-the-floor analyses to consider multiple HAP that are controlled by a single control mechanism; (6) use of post-proposal data to identify the dioxin/furan standard for incinerators with dry air pollution control devices or waste heat boilers; and (7) three provisions of the health-based compliance alternative for total chlorine. See discussion of these topics in Section IV below.

We are proposing changes to several other provisions in light of petitioners' concerns or upon our own review, and also are requesting comment on these proposed changes.

We are not reconsidering the remaining issues raised by Sierra Club and CKRC [3] and have included in the docket to this rulemaking letters explaining our rationale to deny reconsideration. In summary:

1. We deny Sierra Club's petition regarding our use of normal emissions data, in addition to compliance test and in-between data, in the regression analysis to calculate the baghouse universal variability factor (UVF) for particulate matter. Among other things, including normal data results in imputing a lower standard deviation for particulate matter emissions variability, rather than a higher standard deviation as Sierra Club incorrectly surmised.

2. We deny CKRC's petition regarding its concern that subcategorizing liquid fuel boilers using a waste heating value criterion of 10,000 Btu/lb to distinguish between boilers that are burning waste entirely for energy recovery versus boilers that are burning waste fuels at least in part for treatment is inconsistent with the Agency's policy [4] that wastes with a heating value greater than 5,000 Btu/lb are burned for energy recovery. The 5,000 Btu/lb criterion for burning for energy recovery is a policy providing guidance on when combustors are considered to burn hazardous waste as fuel that carries specific regulatory implications. This criterion is not in any way affected by the 10,000 Btu/lb criterion for subcategorizing liquid fuel burners to establish MACT standards. The 10,000 Btu/lb criterion divides liquid fuel burners into two categories based on the heating value of the hazardous waste they burn, and is in no way intended to replace the longstanding 5,000 Btu/lb criterion for energy recovery.

3. We deny Sierra Club's petitions to reconsider the following provisions because the additional reasons we provide in the final rule to support the provisions, or the information we use to support the provision, are corroborative of information and rationales already presented for public comment at proposal and therefore do not justify reconsideration. The additional reasons embellish the rationale we presented at proposal, generally in response to comments.

- Use of particulate matter as a surrogate for nonenumerated metals;
- Use of CO/HC as a surrogate for dioxin/furan and as a surrogate for non-dioxin/furan organic HAP for Phase II sources
- Use of variability factors in setting MACT Floors;
- Approach to establishing the dioxin/furan standard for cement kilns and for incinerators equipped with a wet particulate matter air pollution control device or no air pollution control device;
- Subcategorization of incinerators to establish separate dioxin/furan standards for incinerators equipped with a dry particulate matter air pollution control device and those without a dry particulate matter air pollution control device;
- Approach to establishing the mercury standard for cement kilns using waste concentration data;
- Approach to evaluating a beyond-the-floor standard for total chlorine for cement kilns; and
- Decision not to promulgate beyond-the-floor standards for total chlorine for lightweight aggregate kilns and solid fuel boilers using dry scrubbing.

4. We deny Sierra Club's petition that we reconsider the use of CO/HC as surrogates for non-dioxin/furan organic HAP for Phase I sources in this rulemaking. As we explained at proposal, we view the carbon monoxide, hydrocarbon, and destruction and removal efficiency standards as unaffected by the Court's vacature of the September 1999 "challenged regulations" (see *Cement Kiln Recycling Coalition* v. *EPA*, 255 F. 3d 855, 872 (D.C. Cir. 2001)) for Phase I sources, since these rules were not challenged. See 69 FR at 21221. We therefore did not repropose those standards, and did not consider comments that they be revised as part of this rulemaking.[5]

IV. Discussion of Issues Subject to Reconsideration

Stakeholders who would like for us to reconsider comments they submitted to us previously and that are relevant to the reconsideration issues presented below should identify the relevant docket entry numbers and page numbers of their comments to facilitate expeditious review during the reconsideration process. We plan to take final action on today's reconsideration as expeditiously as possible.

A. Subcategorization of Liquid Fuel Boilers by Heating Value

In the final rule, we redefined the liquid fuel boiler subcategory into two separate boiler subcategories based on the heating value of the hazardous waste they burn: Those that burn waste with a heating value below 10,000 Btu/lb, and those that burn hazardous waste with a heating value of 10,000 Btu/lb or greater. See 70 FR at 59422. Sources would shift from one subcategory to the other depending on the heating value of the hazardous waste burned at the time. *Id.* at 59476.

Sierra Club petitioned for reconsideration stating that EPA developed this subcategorization approach after the period for public comment and, thus, did not provide notice and opportunity for public comment.[6] We are granting reconsideration of this provision because we determined that subcategorization of liquid fuel boilers was appropriate in response to comments on the proposed rule, after the period for public comment as Sierra Club states. Furthermore, subcategorization significantly impacted the development of the emission standards for liquid fuel boilers. Consequently, we are accepting further comment on this approach to subcategorization but are not proposing to change the approach. We believe the

[3] Note that, as discussed in Section II above, we previously granted CKRC's request to reconsider the particulate matter standard for new cement kilns given that new data indicate the single best performing source could not achieve the new source standard. Accordingly, we issued a stay of the new source standard for particulate matter for cement kilns (71 FR 14655 (March 23, 2006)) and proposed to revise the new source standard for particulate matter for cement kilns and make corresponding revisions to the new source standards for incinerators and liquid fuel boilers (71 FR 14665 (March 23, 2006)).

[4] See 48 FR at 49166–167 (March 16, 1983). Note that we discuss in Section IV.A.2 below that, under the policy, we presume wastes with a heating value of 5,000 Btu/lb or greater are burned for energy recovery in a boiler or industrial furnace and acknowledge that sources may be able to document that wastes with a heating value below 5,000 Btu/lb are also burned for energy recovery in particular situations.

[5] Sierra Club has also filed a petition for judicial review that challenges the use of CO/HC as a surrogate for non-dioxin/furan for Phase II sources. Although we believe this surrogate approach is appropriate, if our position is not upheld we would rethink this surrogate approach for Phase I sources as well because the rationale is the same for all hazardous waste combustor source categories.

[6] See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section II, docket item EPA–HQ–OAR–2004–0022–0517.

subcategorization approach is warranted for the reasons provided in the final rule and restate them below. Nonetheless, we are open to comment and will determine whether a change is warranted.

1. Rationale for Subcategorization

We explained in the final rule that we selected normalizing parameters for emission standards that best fit the input to the combustion device. See 70 FR at 59451. We used a thermal normalizing parameter (*i.e.*, expressing the standards in terms of amount of HAP contributed by hazardous waste per thermal content of hazardous waste) where hazardous waste is being used in energy-recovery devices as a fuel. This avoided the necessity of subcategorizing based on unit size.

At proposal we used the thermal emissions format for the liquid fuel boiler standards. See 69 FR at 21283. Commenters on the proposed rule pointed out, however, that some liquid fuel boilers burn lower Btu hazardous waste because that is the only waste available, and those boilers with waste that has a low heating value are, in their words, "penalized," compared to those boilers with waste that has a high(er) heating value. Also, since these are not commercial combustion units, they normally lack the opportunity to blend wastes of different heating values to result in as-fired high heating value fuels. If all liquid fuel boiler standards were normalized by hazardous waste heating value, sources with lower heating value waste must either reduce the mass concentration of HAP or increase the waste fuel heating value (or increase the system removal efficiency) compared to sources with wastes having the same mass concentration of HAP but higher heating value. See 70 FR at 59475. These measures would be problematic, however. Increasing the waste fuel heating value or decreasing the mass concentration of HAP in the waste is generally not possible because boilers burn the waste generated by their facility—they are not commercial combustion units. Decreasing the mass emission rate of HAP by increasing the system removal efficiency would require boilers burning lower heating value waste to incur costs to control HAP mass emission rates to levels lower than required for boilers at facilities that happen to generate waste with a higher heating value.

Moreover, the thermal normalizing parameter is not well suited for a hazardous waste that is not burned entirely for its fuel value. In cases where the lower heating value waste is burned, the boiler may be serving in part as a treatment device for the lower heating value hazardous waste. When this occurs, the better normalizing parameter is the unit's gas flow (a different means of accounting for sources of different size), where the standard is expressed as amount of HAP per volume of gas flow (the same normalizing parameter used for most of the other standards promulgated in the final rule.)

Given these concerns, we established two subcategories among the liquid fuel boilers: Those burning high and those burning low heating value hazardous waste. The normalizing parameter for sources burning lower energy hazardous waste is the same parameter used for the other hazardous waste treatment devices, gas flow rate, so that the standard would be expressed as concentration of HAP per volume of gas flow (a concentration-based form of the standard.) The normalizing parameter for sources burning higher energy content hazardous waste is the thermal parameter used for energy recovery devices, such as cement kilns and lightweight aggregate kilns. For the purposes of calculating MACT floors, the best performers are drawn from those liquid fuel boilers burning lower energy hazardous waste for the lower heating value subcategory, and from those liquid fuel boilers burning higher energy hazardous waste for the higher heating value subcategory. (See Section 23.2 of Volume III of the Technical Support Document for more information.)

Moreover, liquid fuel boilers are not irrevocably placed in one or the other of these subcategories. Rather, the source is subject to the standard for one or the other of these subcategories based on the as-fired heating value of the hazardous waste it burns at a given time. Thus, when the source is burning for energy recovery, then the thermal emissions-based standards apply. When the source is burning at least in part for thermal destruction, then the concentration based standard apply. This approach is similar to how we have addressed the issue of normalization in other rules where single sources switch back and forth among inputs that are sufficiently different to warrant separate classification.

2. Selection of the Heating Value Threshold

We next considered what an appropriate as-fired heating value would be for each liquid fuel boiler subcategory and adopted a value of 10,000 Btu/lb as the threshold for subcategorization. This is approximately the heating value of commercial liquid fossil fuels. See 63 FR at 33782, 33788 (June 19, 1998). It is also typical of current hazardous waste burned for energy recovery. *Id.* Moreover, EPA has used this value in its comparable fuel specification as a means of differentiating fuels from waste. See id. and Table 1 to 40 CFR 261.38, showing that EPA normalizes all constituent concentrations to a 10,000 Btu/lb level in its specification for differentiating fuels from wastes.

We next examined the liquid waste fuel being burned at cement kilns and lightweight aggregate kilns, that burn hazardous waste fuels to drive the process chemistry to produce products, to cross-check whether 10,000 Btu/lb is a reasonable demarcation value for subcategorizing liquid fuel boilers for the purposes of this MACT. We observed that 10,000 Btu/lb in practice is the minimum heating value (or close to the minimum value) found in burn tank and test report data we have for cement kilns and lightweight aggregate kilns.[7] Therefore, we believe the cement kiln and light weight aggregate kiln data confirm that this is an appropriate cutpoint for subcategorizing boilers, since cement kilns and lightweight aggregate kilns are energy recovery devices that blend hazardous wastes into a consistent, high heating value fuel for energy recovery in their manufacturing process.

We then separated the liquid fuel boiler emissions data we had into two groups, sources burning hazardous waste fuel with less than 10,000 Btu/lb and all other liquid fuel boilers, and performed separate MACT floor analyses. (See Sections 13.4, 13.6, 13.7, 13.8, and 22 of Volume III of the Technical Support Document.) We calculated concentration-based MACT standards for these sources from their respective mercury, semivolatile metals, chromium, and total chlorine data.

The regulatory language implementing this subcategorization approach is provided in §§ 63.1209(l)(1)(ii), 63.1209(n)(2)(v), 63.1209(o)(1)(ii), and 63.1217.

B. Correcting Total Chlorine (TCl) Data to 20 ppmv

In the final rule, we corrected all the total chlorine measurements in the data base that were below 20 ppmv to account for potential systemic negative biases in the Method 0050 data. See 70

[7] The cement kiln burn tank data and test report data shows the minimum heating values of 9,900 and 10,000 Btu/lb, respectively, for the hazardous waste. The minimum lightweight aggregate kiln heating values for hazardous waste was 10,000 Btu/lb, excluding the Norlite source.

FR at 59427–29.[8] Sierra Club petitioned for reconsideration stating that EPA corrected the total chlorine measurements in response to comments on the proposed rule—after the period for public comment—and used the corrected data to revise the total chlorine emission standards.[9]

We are granting reconsideration of our approach to account for these method biases to assess the true performance of the best performing sources. Reconsideration is appropriate because, as Sierra Club states, we determined to correct the total chlorine data after the period for public comment on the proposed rule, and correcting the data significantly impacted the development of the total chlorine emission standards.

To account for the bias in the method, we corrected all total chlorine emissions data that were below 20 ppmv to 20 ppmv. We accounted for within-test condition emissions variability for the corrected data by imputing a standard deviation that is based on a regression analysis of run-to-run standard deviation versus emission concentration for all data above 20 ppmv. This approach of using a regression analysis to impute a standard deviation is similar to the approach we used to account for total variability (i.e., test-to-test and within test variability) of PM emissions for sources that use fabric filters.

Under today's reconsideration notice, we are accepting further comment on this approach to address method bias but are not proposing to change the approach. We believe this data correction approach is warranted for the reasons provided in the final rule and restate them below. Nonetheless, we are open to comment and will determine whether a change is warranted.

1. Effect of Moisture Vapor

Commenters on the proposed rule implied that stack gas with high levels of gas phase water vapor will inherently have the potential to be biased low, particularly at emissions less than 20 ppmv. We concluded that there is no basis for claiming that water vapor, per se, causes a bias in SW–846 Method 0050 or its equivalent, Method 26A. Condensed moisture (i.e., water droplets), however, can cause a bias because it can dissolve hydrogen chloride in the sampling train and prevent it from being captured in the impingers if the sampling train is not properly purged. Water droplets can potentially be present due to entrainment from the wet scrubber, condensation in cooler regions of the stack along the stack walls, and entrainment from condensed moisture dripping down the stack wall across the inlet duct opening.

Although Method 0050 addresses the water droplet issue by use of a cyclone and 45 minute purge, a study by Steger[10] concludes that a 45 minute purge is not adequate to evaporate all water collected by the cyclone in stacks with a total moisture content (vapor and condensed moisture) of 7 to 9%. At those moisture levels, Steger documented the negative bias that commenters reference. See 70 FR at 59427. Steger's recommendation was to increase the heat input to the sample train by increasing the train and filter temperature from 120 °C (248 °F) to 200 °C (392 °F). We agree that increasing the probe and filter temperature will provide a better opportunity to evaporate any condensed moisture, but another solution to the problem is to require that the post-test purge be run long enough to evaporate all condensed moisture. That is the approach used by Method 26A, that EPA promulgated after Method 0050, and that sources must use to demonstrate compliance with the final standards. Method 26A uses an extended purge time rather than elevating the train temperature to address condensed moisture because that approach can be implemented by the stack tester at the site without using nonstandard equipment.

We attempted to quantify the level of condensed moisture in the Steger study and to compare it to the levels of condensed moisture that may be present in hazardous waste combustor stack gas. This would provide an indication if the bias that Steger quantified with a 45 minute purge might also be applicable to some hazardous waste combustors. We concluded that this comparison would be problematic, however, because: (1) Given the limited information available in the Steger paper, it is difficult to quantify the level of condensed moisture in his gas samples; and (2) we cannot estimate the levels of condensed moisture in hazardous waste combustor stack gas because, even though condensed moisture may have been present during a test, method protocol is to report the saturation moisture level only (i.e., the amount of water vapor present), and not the total moisture content (i.e., both condensed and vapor phase moisture).

We did conclude, however, that, if hazardous waste combustor stack gas were to contain the levels of condensed moisture present in the gas that Steger tested, the 45 minute purge required by Method 0050 would not be sufficient to avoid a negative bias. We also concluded that this is potentially a practical issue and not merely a theoretical concern because, as commenters note, hazardous waste combustors that use wet scrubbers are often saturated with water vapor that will condense if the flue gas cools.

2. Data From Wet Stacks When a Cyclone Was Not Used

The data for total chlorine underlying EPA's proposal came exclusively from compliance testing. Commenters on the proposed rule stated that Method 0050 procedures for addressing water droplets (adequate or not, as discussed above) were not followed in many cases because a low bias below 20 ppmv was not relevant to demonstrating compliance with standards on the order of 100 ppmv. We do not know which data sets may be problematic because, as previously stated, the moisture concentration reported was often the saturation (vapor phase only) moisture level and not the total (vapor and liquid) moisture in the flue gas. We also have no documentation that a cyclone was used—even in situations where the moisture content was documented to be above the dew point. We therefore concluded that all data below 20 ppmv from sources controlled with a wet scrubber are suspect and should be corrected.

3. Potential Bias Due to Filter Affinity for Hydrogen Chloride

Studies by the American Society of Testing and Materials indicate that the filter used in the Method 0050 train (and the M26/26A trains) may adsorb/absorb hydrogen chloride and cause a negative bias at low emission levels. (See ASTM D6735–01, section 11.1.3 and "note 2" of section 14.2.3.) This inherent affinity for hydrogen chloride can be satisfied by preconditioning the sampling train for one hour. None of the tests in our database were preconditioned in such a manner.

We are normally not concerned about this type of bias because we would expect the bias to apply to all sources equally (e.g., wet or dry gas) and for all subsequent compliance tests. In other words, we are ordinarily less concerned if a standard is based on biased data, as long as the means by which the standard was developed and the means

[8] See also USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," Section 5.5, September 2005.

[9] See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section IV, docket item EPA–HQ–OAR–2004–0022–0517.

[10] Steger, J.L., et al., "Laboratory Evaluation of Method 0050 for Hydrogen Chloride", Proc of 13th Annual Incineration Conference, Houston, TX, May 1994.

of compliance would experience identical bias (since the level of control would be reflected accurately). However, because we corrected the wet gas measurements below 20 ppmv to address the potential low bias caused by condensed moisture, this correction also corrected for any potential bias caused by the filter's inherent affinity for hydrogen chloride. This resulted in a data set that is only partially corrected for this issue—sources with wet stacks were corrected for this potential bias while sources with dry stacks were not corrected. To address this unacceptable mix of potentially biased and unbiased data (i.e., dry gas data biased due to affinity of filter for hydrogen chloride and wet gas data corrected for condensed moisture and affinity of filter for hydrogen chloride), we also corrected total chlorine measurements from dry gas stacks (i.e., sources that do not use wet scrubbers).

4. Deposition of Alkaline Particulate on the Filter

Commenters on the proposed rule were also concerned that hydrogen chloride may react with alkaline compounds from the scrubber water droplets that are collected on the filter ahead of the impingers. Commenters suggested this potential cause for a low bias at total chlorine levels below 20 ppmv is another reason not to use measurements below 20 ppmv to establish the standards. Although alkaline particulate deposition on the method filter causing a negative bias is a much greater concern for sources that have stack gas containing high levels of alkaline particulate (e.g., cement kilns, sources equipped with dry scrubbers), we agreed with commenters that this may be of concern for all sources equipped with wet scrubbers. Our approach to correct all data below 20 ppmv addressed this concern.

5. Decision Unique to Hazardous Waste Combustors

We note that the rationale for correcting total chlorine data below 20 ppmv to account for the biases discussed above is unique to the hazardous waste combustor MACT rule. Some sources apparently did not follow Method 0050 procedures to minimize the low bias caused by condensed moisture for understandable reasons. Even if sources had followed Method 0050 procedures to minimize the bias (i.e., cyclone and 45 minute purge) there still may have been a substantial bias because of insufficient purge time, as Steger's work may indicate. We note that the total chlorine stack test method used by sources other than hazardous waste combustors—Method 26A—requires that the cyclone and sampling train be purged until all condensed moisture is evaporated. We believed it was necessary to correct our data below 20 ppmv data because of issues associated exclusively with Method 0050 and how it was used to demonstrate compliance with these sources.

6. Determining Variability for Data at 20 ppmv

Correcting those total chlorine data below 20 ppmv to 20 ppmv brought about a situation identical to the one we confronted with nondetect data. See 70 FR at 59464–66. The corrected emissions data for the MACT pool of best performing source(s) were now generally the same values—20 ppmv. This had the effect of understating the variability associated with these data. To address this concern, we took an approach similar to the one we used to determine variability of PM emissions for sources equipped with a fabric filter. In that case, we performed a linear regression on the data, charting variability against emissions, and used the variability that resulted from the linear regression analysis as the variability for the sources' average emissions. In this case, most or all of the incinerator and liquid fuel boiler sources in the MACT pool had (corrected) average emissions of TCl at or near 20 ppmv. We therefore performed a linear regression on the total chlorine data charting average test condition results above 20 ppmv against the variability associated with that test condition. The variability associated with 20 ppmv was the variability we used for incinerator and liquid fuel boiler data sets affected by the 20 ppmv correction.

We also considered using the statistical imputation approach we used for nondetect values. See 70 FR at 59464. The statistical imputation approach for correcting data below 20 ppmv without dampening variability would involve imputing a value between the reported value and 20 ppmv because the "true" value of the biased data would lie in this interval. This approach would be problematic, however, given that many of the reported values were much lower than 20 ppmv; our statistical imputation approach would tend to overestimate the run to run variability. Consequently, we concluded that a regression analysis approach would be more appropriate. A regression analysis is particularly pertinent in this situation because: (1) We consider data above 20 ppmv used to develop the regression to be unbiased; and (2) all the corrected data averages for which we imputed a standard deviation from the regression curve are at or near 20 ppmv. Thus, any potential concern about downward extrapolation from the regression was minimized.

We note that, although a regression analysis is appropriate to estimate run-to-run variability for the corrected total chlorine data, we could not use a linear regression analysis to address variability of nondetect values. To estimate a standard deviation from a regression analysis, we would need to know the test condition average emissions. This would not be feasible, however, because some or all of the run measurements for a test condition are nondetect. In addition, we were concerned that a regression analysis would not accurately estimate the standard deviation at low emission levels because we would have to extrapolate the regression downward to levels where we have few measured data (i.e., data other than nondetect). Moreover, the statistical imputation approach is more suitable for handling nondetects because the approach calculates the run-to-run variability by taking into account the percent nondetect for the emissions for each run.[11] A regression approach would be difficult to apply particularly in the case of test conditions containing partial nondetects or a mix of detect and nondetect values. Given these concerns with using a regression analysis to estimate the standard deviation of test conditions with runs that have one or more nondetect (or partial nondetect) measurements, we concluded that the statistical imputation approach best assures that the calculated floor levels account for run-to-run emissions variability.

C. Use of PS–11 and Procedure 2 as Guidance for Extrapolating the Alarm Set-Point of a Particulate Matter Detection System (PMDS)

Petitioner CKRC asks that EPA reconsider its references to Performance Specification 11 (PS–11) and Procedure 2 in the particulate matter detection system (PMDS) provisions of the final rule. We are granting reconsideration because we developed the procedures for extrapolating the alarm set-point for PMDS, that included references to PS–11 and Procedure 2, in response to comments on the proposed rule and after the period for public comment. See 70 FR at 59490.

[11] For multi-constituent HAP (e.g., semi-volatile metals) the emissions for a run could be comprised of fully detected values for some HAP and detection limits for other HAP that were nondetect.

CKRC also states that the reference to PS–11 for particulate matter CEMS (40 CFR part 60, appendix B) and Procedure 2 (Appendix F, Part 60) for use as guidance to implement provisions to extrapolate the alarm set-point of a PMDS may effectively prevent its members from utilizing this option due to significant technical difficulties and excessive costs.[12] See § 63.1206(c)(9)(iii)(B). CKRC further states that PS–11 and Procedure 2 contain a number of problems as they would apply to cement kilns. CKRC's petition does not identify any such problems or technical difficulties, however, and only notes that it has filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging EPA's final rule adopting PS–11 and Procedure 2, which case is being held in abeyance.

Finally, CKRC states that use of a regression analysis approach to extrapolate the alarm set-point is not justified or necessary to establish an approximate correlation between the particulate matter detector system response and particulate matter concentrations. CKRC suggests that an alternative approach would be based on a linear relationship passing through zero and the mean of the PM comprehensive performance test results.

When we reviewed the procedures in the final rule for establishing the set-point in light of CKRC's concerns regarding use of a regression analysis to extrapolate the set-point and use of PS–11 and Procedure 2 as guidance, we identified several shortcomings of the final rule: (1) More than the required five test runs would be needed to perform a meaningful statistical analysis of alternative correlation models to identify the most appropriate model; (2) a general reference to use PS–11 and Procedure 2 as guidance is overly broad given that those provisions pertain to PM continuous emissions monitors (CEMS) and would not be applicable to PMDS absent a specific PMDS requirement; and (3) the final rule contemplated establishing the set-point after the comprehensive performance test and, thus, did not provide for operations under the Documentation of Compliance. Consequently, we are today proposing to revise the provisions for establishing the alarm set-point by extrapolation by: (1) Adding procedures to establish the alarm set-point for operations under the Documentation of Compliance; (2) revising procedures to extrapolate the alarm set-point for operations under the Notification of Compliance; and (3) providing specific rather than generic references to PS–11 and Procedure 2 provisions that must be followed to extrapolate the alarm set-point.

1. Summary of the PMDS Provisions in the Final Rule

The final rule established revised procedures for establishing the alarm set-point if you elect to use a particulate matter detector system (PMDS) in lieu of site-specific operating parameter limits for compliance assurance [13] for sources equipped with electrostatic precipitators and ionizing wet scrubbers, and in lieu of a bag leak detection system for sources equipped with a baghouse. See 70 FR at 59424 and 59490–91, and § 63.1206(c)(9).[14] The rule explicitly allows you to maximize controllable operating parameters during the comprehensive performance test to account for emissions variability by, for example, detuning the air pollution control device (APCD) or spiking ash to establish an alarm set-point that should be routinely achievable considering controllable parameters. If you elect to use a PMDS, the rule requires you to establish the set-point either as the average of the test condition run average detector responses during the comprehensive performance test or as the extrapolation of the detector response after approximating the correlation between the detector response and particulate matter emission concentrations. You may extrapolate the detector response up to a response value that corresponds to 50% of the particulate matter emission standard or 125% of the highest particulate matter concentration used to develop the correlation, whichever is greater. To establish an approximate correlation of the detector response to particulate matter emission concentrations, the rule recommends that you use as guidance Performance Specification-11 for particulate matter CEMS (40 CFR part 60, appendix B), except that you need conduct only 5 runs to establish the initial correlation rather than a minimum of 15 runs required by PS–11. The final rule also recommends that, for quality assurance, you should use Procedure 2 of Appendix F, Part 60, and the manufacturer's recommended procedures for periodic quality assurance checks and tests, except that: (1) You must conduct annual Relative Response Audits as prescribed by Procedure 2; and (2) you need only conduct Relative Response Audits on a 3-year interval after passing two sequential annual Relative Response Audits.

2. Proposed Procedures To Establish the Set-Point for Operations Under the Documentation of Compliance

The final rule was silent on how to establish the set-point for operations under the Documentation of Compliance (*i.e.*, in the interim between the compliance date and submission of the Notification of Compliance subsequent to the comprehensive performance test). Under today's proposal, we would add a new provision that requires you to obtain a minimum of three pairs of reference method data and PMDS data, establish a zero point correlation value, and assume a linear correlation model to extrapolate the alarm set point as the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. The extrapolated emission concentration could not exceed the PM emission standard.

This is a reasonable approach to establish an interim set-point for operations prior to conducting the comprehensive performance test to document compliance with the emission standards. Requiring the additional testing needed to obtain enough test runs to identify the actual correlation mode—approximately 12 test runs—would discourage use of PMDS because of the cost of the additional testing. This is undesirable because a PMDS should provide better compliance assurance than the alternatives of operating parameter limits for electrostatic precipitators (ESPs) and ionizing wet scrubbers (IWSs) and a bag leak detection system for fabric filters, even if the PMDS is only approximately correlated with PM concentrations.[15] In addition, we note that the actual correlation model that best fits the combustor/PMDS may in fact be linear or a concave down polynomial, logarithmic, exponential, or power correlation where PM

[12] See letter from David P. Novello to Stephen L. Johnson regarding "Petition for Reconsideration of Certain Provisions of Hazardous Waste Combustor MACT Replacement Standards Rule," dated December 9, 2005, p. 9, docket item EPA–HQ–OAR–2004–0022–0520.

[13] That is, assurance of compliance with the PM emission standard by continuous monitoring of a surrogate parameter—PMDS detector response in this case—for PM emission concentrations.

[14] See also USEPA, "Technical Support Document for HWC MACT Standards, Volume IV: Compliance with the HWC MACT Standards," September 2005, Appendix C.

[15] See discussion of the limitations of operating parameter limits for ESPs and IWSs and bag leak detection systems for fabric filters (76 FR at 21346–47).

concentrations increase less rapidly than the PMDS response (i.e., such that assuming a linear correlation would be conservative). Alternatively, the actual, best-fit correlation model may be nonlinear and concave up such that a linear correlation assumption would not be conservative. We specifically request comment on the extent that this is problematic and approaches to address the issue.

The rule would require you to extrapolate from the average of the test condition run averages rather than from the highest run of the test condition given that the runs were intended to replicate controllable operating conditions. This would also provide a more conservative extrapolation that is appropriate given that you would assume a linear correlation model, as discussed above.

The rule would allow you to include a zero point correlation value that you establish under procedures in Section 8.6 (5) of Performance Specification–11 for PM CEMS (40 CFR part 60, appendix B). Use of a zero point correlation value is necessary to establish a linear correlation given that only three test runs would be required and is consistent with PM CEMS correlation procedures.

In addition, the rule would allow you to use existing paired PM emissions data and PMDS data that you may have. For example, if you operate a COMS that meets the detection limit requirements of paragraph (c)(9)(i)(A) and have continuous opacity monitoring system (COMS) response data for PM test runs, you may use those data pairs to establish a linear correlation to identify the initial set-point. To help ensure that the data are representative of the current design and operating conditions of the combustor and PMDS, the rule would require that: (1) The data be no more than 60 months old consistent with the data in lieu provisions of § 63.1207(c)(2); and (2) the design and operation of the combustor or PMDS must not have changed in a manner that may adversely affect the correlation of PM concentrations and PMDS response.

Finally, you would extrapolate the alarm set point to the PMDS response that corresponds to a PM concentration that is 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. Of course, the extrapolated emission concentration must not exceed the PM emission standard. Allowing this level of extrapolation is consistent with PS–11 procedures where the range of a PM CEMS is up to 125% of the highest PM concentration used to develop the correlation. The range of the CEMS for low emitting sources (i.e., defined by Section 3.16 of PS–11 generally as sources that do not emit PM at concentrations that exceed 50% of the PM standard during the most recent performance test or on a daily average) is the greater of 50% of the PM standard or 125% of the highest PM concentration used to develop the correlation.

3. Revised Procedures To Extrapolate the Alarm Set-Point for Operations Under the Notification of Compliance

The final rule allowed you to establish the set-point following the comprehensive performance test as the average of the test run average PMDS response or by extrapolation. See § 63.1206(9)(ii and iii). Under the extrapolation option, you would use PS–11 and Procedure 2 as guidance to identify the most appropriate correlation model based on five correlation tests.

In retrospect, we now conclude (subject to consideration of comment) that it would be difficult to use PS–11 procedures to evaluate correlation models with only five correlation tests (plus a zero point correlation value) to identify the most appropriate model to use for extrapolating the set-point. The statistical criteria (i.e., confidence interval half range percentage, tolerance interval half range percentage, and correlation coefficient) used to evaluate alternative correlation models [16] are directly affected by the number of test runs. With very few test runs, the confidence and tolerance intervals would be relatively high and the correlation coefficient would be relatively low as an artifact of the statistical procedures such that it would be difficult to draw conclusions from the analyses. For example, the rate of decrease of the statistical factors used to calculate the confidence and tolerance intervals slows substantially at 10 degrees of freedom and greater, that corresponds to 12 or more test runs. For 12 test runs, the value of the t-statistic provided in Table 1 of PS–11 for the half range of the 95 percent confidence interval for the mean PM concentration would be 2.228 while for 5 test runs and 15 test runs the t-statistic would be 3.182 and 2.160, respectively. See Table 1 in PS–11.

[16] Alternative correlation models are: linear, polynomial, logarithmic, exponential, and power function. See Section 12.3 of PS–11.

Given that, as just shown, a minimum of 12 test runs [17] over the range of PM concentrations would generally be needed to use the PS–11 procedures to identify the best correlation model, we considered requiring an additional eight test runs during the comprehensive performance test campaign to provide a pool of 12 paired (i.e., PMDS response and PM concentration) data point: Three test runs and a zero point used for the Documentation of Compliance extrapolation; three test runs from the comprehensive performance test to document compliance with the PM standard; and an additional five test runs over a range of operating conditions during the comprehensive performance test campaign. We are concerned, however, that requiring the additional five test runs over the range of operating conditions could be a disincentive to implement a PMDS in lieu of establishing operating parameter limits for ESPs and IWSs and using a bag leak detector system for fabric filters.[18] In addition to the cost of the five additional test runs, you would need to take measures to vary PM concentrations during the testing to provide useful correlation data, that could be problematic (i.e., cost would be incurred for modifications to design or operations) for some sources.

We considered whether it would be reasonable to continue with the approach used for the Documentation of Compliance—to assume a linear regression model given the burden of obtaining enough paired data to identify the most appropriate correlation model. There would now be seven paired data available to define the linear regression: the three test runs and zero point from the Documentation of Compliance combined with the three PM comprehensive performance test runs. We are concerned, however, that the additional comprehensive performance test data may provide little improvement in defining the linear regression because those new data would likely be in the same PM concentration range as the nonzero point test runs used for the Documentation of Compliance—emissions that represent the high end of the range of controllable emissions variability.

[17] This actually means 12 data points which could be comprised of 11 test runs and a zero point correlation value.

[18] Note that, if you nonetheless happen to obtain a minimum of 12 paired data points (e.g., from current or historical testing within 60 months of the compliance date) that provide a range of "as found" and compliance test-level PM concentrations, the rule would require that you use PS–11 procedures to identify the most appropriate correlation model rather than to assume a linear model.

Consequently, we have tentatively concluded that three additional test runs at "as found" (i.e., normal) operating conditions and PM concentrations at some point during the comprehensive performance test campaign [19] should be required to expand the range and number of data pairs to better define the assumed linear regression. This would provide a pool of 10 data pairs: three test runs and a zero point used for the Documentation of Compliance extrapolation; three test runs from the comprehensive performance test to document compliance with the PM standard; and three test runs under "as found" operations.[20]

We are proposing that you would use the linear regression defined by these 10 paired data to extrapolate the alarm set-point to a response value that corresponds to 50% of the PM emission standard or 125% of the highest PM concentration used to develop the correlation, whichever is greater. It is reasonable to extrapolate from the highest PM concentration in the correlation rather than the average of the test condition averages (for the comprehensive performance test) as would be required under the Documentation of Compliance because the additional data pairs, and especially the "as-found" data pairs, better define the linear regression and remove some uncertainty in the extrapolation.

We considered whether removing the zero point correlation value may improve the accuracy of the regression given that you would be assuming a linear regression when the relationship between PMDS response and PM concentrations may actually follow another model (e.g., logarithmic). If the regression is in fact nonlinear, using only those data pairs in the high end of the PM concentrations range—in the range of "as-found" PM concentrations to performance test concentrations—may better estimate through linear extrapolation the PMDS response at higher PM concentrations. For situations where the correlation may be nonlinear and concave up, retaining the zero point in the analysis may result in a lower slope and thus a nonconservative (i.e., too high) extrapolated set-point. We also considered, however, that if the PM concentration range represented by the data pairs was not substantial, deleting the zero point may introduce substantial additional uncertainty in the regression. Therefore, we initially conclude that the zero point should be retained to define the linear correlation. Nonetheless, we specifically request comment on this issue.

4. Revising the Initial Notification of Compliance Set-Point Established by Extrapolation

The extrapolated alarm set-point established in the initial Notification of Compliance would be an interim extrapolated set-point. We are proposing that you must revise the alarm set-point after each Relative Response Audit (RRA).[21]

After the initial RRA, you would have a pool of a minimum of 13 data pairs [22] that should be enough to use PS–11 procedures under Sections 12.3 and 12.4 to identify the most appropriate correlation model rather than continuing to assume a linear correlation. Note that the PMDS would not need to meet the PS–11 performance specifications. The PMDS is used for compliance assurance and is not a PM CEMS that would be used for compliance monitoring. Nonetheless, the statistical criteria for evaluating the correlation for a PM CEMS are also applicable to evaluating the correlation for a PMDS, and the criteria can be compared for alternative correlation models to the PM CEMS specifications in Section 13.2 of PS–11 to identify the most appropriate correlation model.

5. Specific Rather Than Generic References to PS–11 and Procedure 2

The final rule stated that you should use PS–11 as guidance to establish a correlation and Procedure 2 for quality assurance. In retrospect, we believe that those references are overly broad and could result in a permitting authority inappropriately applying provisions applicable to PM CEMS to a PMDS. Consequently, we propose to provide specific references to PS–11 and Procedure 2 where compliance with particular provisions would be required. Examples are the requirement to use Section 12.3 procedures of PS–11 to characterize alternative correlation models and Sections 12.4 and 13.2 procedures to identify the most appropriate correlation model.

With respect to Procedure 2, there are many quality assurance requirements for PM CEMS that are not appropriate for a PMDS, including absolute correlation audits and response correlation audits. Accordingly, we are proposing to require compliance with specific Procedure 2 requirements rather than making a generic reference to use Procedure 2 as guidance.

The Procedure 2 requirements that would apply to a PMDS are the requirements to perform an RRA. See Section 10.3 (6) of Procedure 2. As stated in the final rule, you must conduct an annual RRA, except that you need only conduct it on a 3-year interval after passing two sequential annual RRA. Today's proposal would expressly require you to comply with the provisions of Section10.4 (6) that establish the criteria for passing a RRA. Those provisions state that, if you fail the RRA, the PMDS is out of control.

If the PMDS is out of control, today's proposal would also require you to comply with Section 10.5 of Procedure 2 that requires you to take corrective action until your PMDS passes the RRA criteria. If the RRA criteria cannot be achieved, you would not be required to perform a Relative Correlation Audit (RCA) as provided by Section 10.5 (1)(ii), however. That provision is appropriate for a PM CEMS but not a PMDS. If the RRA criteria cannot be achieved, today's rule would require you to re-establish the alarm set-point without using extrapolation as the average of the run averages of PMDS responses for the most recent comprehensive performance test to demonstrate compliance with the PM emission standard. See proposed paragraph (c)(9)(iii)(A).

6. Operations When the PMDS Is Malfunctioning

When reviewing the PMDS requirements in the final rule in response to the reconsideration petition, we determined that the rule was silent on operations when the PMDS is malfunctioning because it is out of control or inoperable, for example. We believe it is reasonable to require that

[19] The "as-found" test runs would be conducted during the general time frame of the comprehensive performance test: before, in between, or after comprehensive performance test runs.

[20] If you operate a COMS that meets the detection limit requirements of paragraph (c)(9)(i)(A) and have a minimum of three data pairs under "as found" operations (or operations that result in a substantial range of PM concentrations) that were obtained within 60 months of the compliance date, you must use those data to better define the linear regression used to extrapolate the set-point for the Documentation of Compliance. You would not be required, however, to conduct additional "as found" testing during the comprehensive performance test campaign.

[21] Note that the rule continues to require you to conduct annual RRAs as prescribed by Procedure 2, except that you need only conduct RRA on a 3-year interval after passing two sequential annual RRA. A RRA is performed by collecting three PMDS and PM concentration pairs for "as-found" source operating conditions and PM concentrations.

[22] The 13 data pairs would be comprised of: three test runs and a zero point used for the Documentation of Compliance extrapolation; six test runs for the initial Notification of Compliance extrapolation comprised of three test runs from the comprehensive performance test to document compliance with the PM standard and three test runs under "as found" operations; and three test runs under "as-found" operations for the initial RRA.

operations when the PMDS is unavailable be considered the same as operations that exceed the alarm set-point given that there would be no information to conclude otherwise. Thus, we are proposing to require you to take corrective measures to correct the malfunction or minimize emissions, and the duration of the malfunction would be added to the time when the PMDS exceeds the alarm set-point. If the time of PMDS malfunction and exceedance of the alarm set-point exceeds 5 percent of the time during any 6-month block time period, you would have to submit a notification to the Administrator within 30 days of the end of the 6-month block time period that describes the causes of the exceedances and PMDS malfunctions and the revisions to the design, operation, or maintenance of the combustor, air pollution control equipment, or PMDS you are taking to minimize exceedances.

We also determined that the bag leak detection system (BLDS) requirements under § 63.1209(c)(8) did not include provisions to address periods of time when the BLDS is malfunctioning. Accordingly, we are proposing to make similar revisions to the BLDS requirements.

D. Tie-Breaking Procedure for New Source Standards

In the notice of proposed rulemaking, we described methodologies used to determine MACT floors for HAP, including the SRE/Feed approach [23] used specifically for those HAP whose emissions can be controlled in part by controlling the amount of HAP in the hazardous waste fed to the source. See 69 FR at 21223–25. In general, the SRE/Feed methodology is applicable to HAP metals and chlorine. The SRE/Feed approach identifies the sources in our data base with the lowest hazardous waste feedrate of the HAP and the sources with the best system removal efficiency for the same HAP. The best performing sources (MACT pool) are those with the best combination of hazardous waste feedrate and system removal efficiency as determined by our ranking procedure. We then use the emission levels from these sources to calculate the emission level achieved by the average of the best performing sources. When determining the MACT floor for new sources, we use the emission level from the single source with the best combination of hazardous waste feedrate and system removal efficiency.

We also discussed how we determined which sources are included in the MACT pool. First, we ranked each source's hazardous waste feedrate against all the other sources' feedrates on a HAP-by-HAP (e.g., mercury) or HAP group (e.g., low volatile metals) basis. Then we assigned a relative rank of 1 to the source with the lowest feedrate level, a rank of 2 to the source with the second lowest feedrate, and so on. Next, we applied the same ranking procedure to each source's system removal efficiency for the same HAP. The source with the best system removal efficiency is assigned a relative rank of 1, and so on. Then each source's feedrate ranking score and system removal efficiency score were summed to obtain an SRE/Feed aggregated score. Finally, we arrayed the SRE/Feed aggregated scores from lowest to highest and the MACT pool was comprised of the required number of sources with the lowest SRE/Feed aggregated scores. For new sources the MACT pool for a given HAP or HAP group is comprised of the single best performing source, that is, the source with lowest SRE/Feed aggregated score. See 69 FR at 21224.

In the final rule, we used the SRE/Feed methodology for determining MACT floors for HAP metals and total chlorine.[24] The preamble to the final rule also presented a summary of our responses to significant comments regarding the SRE/Feed approach. See 70 FR at 59441–47. We also noted that two analyses for new incinerators identified multiple sources with identical single best SRE/Feed aggregated scores.[25] This resulted in a tie for the single best performing source for the mercury and low volatile metals new source standards for incinerators. See 70 FR at 59447. In these instances, we applied a tie-breaking procedure to identify the single best performing source and we selected the source with the lowest emissions (of the tied sources) as the criterion to break the tie.

The CRWI states that EPA's tie-breaking procedure has not been the subject of direct opportunity for public comment. We agree with petitioner CRWI. Because there were no ties for the single best performing source in the proposal rule, we did not discuss the concept of selecting the source with the lowest emissions as the criterion to break ties. In addition, the tie-breaking procedure (in the rare instances when a tie occurs) is a key step in setting standards because the selected directly affects the stringency of the emission standard. Therefore, we conclude that there was no opportunity to comment on this tie-breaking procedure and grant CRWI's petition for reconsideration.

The CRWI states in their petition that EPA's decision to break the tie by selecting the source with the lowest emissions results in a MACT floor that is below (more stringent) what the other best performers of the tied sources are achieving.[26] CRWI argues that selecting the source with the lowest emissions is inconsistent with the statutory mandate. Additionally, CRWI argues that relying on emission levels as the tie-breaker between best performing sources is inconsistent with EPA's MACT floor methodology because EPA adopted the SRE/Feed approach while rejecting an emissions-based approach.

The arguments presented in CRWI's petition for reconsideration have not persuaded us that our tie-breaking procedure—selecting the source (of the tied sources) with the lowest emissions as the single best performing source—was erroneous or inappropriate. We believe this approach is a reasonable interpretation of section 112(d)(3), that states the new source standard shall not be less stringent than the emission control that is achieved in practice by the best controlled similar *source* ("source" being singular, not plural). Moreover, we believe use of the emission level as the tie-breaking criterion is reasonable, not only because it is a measure of control, but because we have already fully accounted for hazardous waste feedrate control and system removal efficiency in the SRE/Feed ranking methodology. To choose either of these factors to break the tie would give that factor disproportionate weight. Nevertheless, given that the tie-breaker issue came up between proposal and promulgation of the final rule and so has not been the subject of direct opportunity for public comment, in

[23] SRE means system removal efficiency and is a measure of the percentage of HAP that is removed prior to being emitted relative to the amount fed to the unit from all inputs (e.g., hazardous waste, fossil fuels, raw materials).

[24] As noted in the preamble, there were a few instances where the SRE/Feed methodology was not used to determine the MACT floor for HAP metals and total chlorine. See, for example, 69 FR at 21224. However, we did use the SRE/Feed approach for the standards addressed by CRWI's petition for reconsideration.

[25] USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix E, Tables "SF–INC–HG" and "SF–INC–LVM."

[26] The two instances in which there was a tie for the single best performing source include mercury and low volatile metals for incinerators. The two sources tied in the mercury analysis had emissions, including variability (the 99th percentile upper prediction limit), of 8.1 and 907 ug/dscm. The low volatile metals MACT floor analysis included a three-way tie. The three sources had emissions of 23, 129, and 198 ug/dscm. See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix E, Tables "SF–INC–HG" and "SF–INC–LVM."

today's notice of reconsideration we are requesting public comment on our decision to select the source (of all tied sources) with the lowest emissions as the single best performing source for purposes of new source floor determinations. In addition, we are seeking comment on alternative tie-breaking criteria suggested by the CRWI such as the single source (of the tied sources) with the best system removal efficiency, the single source (of the tied sources) with the worst system removal efficiency, or some form of averaging (e.g., the 99th percentile upper prediction limit) of the tied sources.

Because we are proposing to retain the same tie-breaker procedure as in the final rule, the new source emission standards promulgated for mercury and low volatile metals under § 63.1219(b)(2) and (b)(4) would not change.

E. Beyond-the-Floor Analyses To Consider Multiple HAP That Are Similarly Controlled

In developing MACT standards, we also must determine whether further emission reductions are achievable using different or additional control technologies. We may establish standards more stringent than the MACT floor based on the consideration of the cost of achieving the emissions reductions, any non-air health and environmental impacts, and energy requirements. CAA section 112(d)(2). We call these standards beyond-the-floor standards.

In the notice of proposed rulemaking, we evaluated beyond-the-floor standards for each HAP or HAP group (i.e., semivolatile metals comprised of lead and cadmium, low volatile metals comprised of arsenic, beryllium, and chromium). The beyond-the-floor evaluations were discussed in the preamble and presented in the technical support document.[27] As explained in the technical support document, each beyond-the-floor analysis was done separately by HAP. For example, when evaluating the cost of a beyond-the-floor standard for dioxin/furans based on activated carbon injection, we applied the full cost of an activated carbon injection system to the beyond-the-floor. In a separate analysis, the same approach was used when evaluating a beyond-the-floor standard for mercury based on activated carbon injection. We received a public comment that the beyond-the-floor analyses for similarly controlled HAP by a single type of control device (e.g., activated carbon injection) overestimate the costs for an individual HAP because the control system would reduce multiple HAP.[28] The commenter argued that EPA may have found additional beyond-the-floor results acceptable had the control device costs been apportioned properly among the HAP.

To address this comment in the final rule, we revised the beyond-the-floor analyses to include an additional analysis evaluating multiple HAP that can be controlled by a single control device (*i.e.*, activated carbon injection for dioxin/furans and mercury and improved particulate matter control for the nonvolatile metals and particulate matter).[29] Noting that the first appearance of these new beyond-the-floor analyses was in the final rule, the Sierra Club's petition for reconsideration argues that EPA provided no opportunity to comment on these analyses. We agree with petitioner Sierra Club because we included these additional analyses in the final rule in response to a public comment. Therefore, we are granting the Sierra Club's request for reconsideration of the beyond-the-floor analyses that are based on activated carbon injection and improved particulate matter control. In today's notice, we are providing an opportunity for public comment on these beyond-the-floor analyses.

In addition, after reexamining the beyond-the-floor analyses used in the final rule for similarly controllable HAP by a single control device and also the issues raised in the petition for reconsideration of the Sierra Club, we are proposing to revise the beyond-the-floor methodology. The methodology is presented in the technical support document supporting this rulemaking; however, a brief discussion of the methodology is presented below.[30] The results of the proposed beyond-the-floor analyses are also presented in this support document.

The initial step would be to identify a suite of beyond-the-floor standards for each HAP or HAP group for each source category or subcategory. The six HAP or HAP groups include dioxin/furans, mercury, particulate matter (as a surrogate for the unenumerated metals antimony, cobalt, manganese, nickel, and selenium), semivolatile metals, low volatile metals, and hydrogen chloride and chlorine (total chlorine). We call this the comprehensive beyond-the-floor analysis. For reasons discussed below, beyond-the-floor evaluations for carbon monoxide and hydrocarbons are done separately. Next we identify an air pollution control strategy capable of achieving the potential beyond-the-floor standards and estimate costs of these controls using, when available, standardized and peer reviewed cost models developed by EPA.[31] In the case of control devices that are capable of reducing emissions of more than one HAP or HAP group, including activated carbon injection (or carbon beds) and improved particulate matter control, we apportioned the total costs of the control device to those HAP that would be controlled by the technology. HAP emission reductions and non-air quality health and environmental impacts and energy requirements were then estimated.

We next determined whether the comprehensive beyond-the-floor analysis was achievable by applying the statutory factors of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements for each HAP or HAP group. The cost metric we would use to consider the cost of achieving emissions reductions is cost-effectiveness—dollars per unit mass reduction (e.g., $ per ton removed), a reasonable means of assessing cost of control technologies and strategies. See, e.g. *Husqvarna AB* v. *EPA*, 254 F. 3d 195, 200 (D.C. Cir. 2001). After considering these statutory factors, we evaluated each of the six HAP or HAP groups of the comprehensive analysis to identify those beyond-the-floor standards where further emission reductions appear achievable. If emission reductions appear achievable for all six HAP or HAP groups, then we would propose beyond-the-floor standards for these HAP. For co-controlled HAP, however, if some results appeared achievable while others did not, we conducted a subsequent analysis whereby the costs associated with the unachievable HAP are reapportioned to those co-controlled HAP appearing achievable. We believe this reapportioning step is necessary to prevent costs of control of a co-controlled HAP from being diluted by costs from unachievable (too costly) reductions of another co-controlled HAP. Without the reapportionment of

[27] See HAP-specific discussions in preamble (69 FR at 21240–21297). See also USEPA, "Draft Technical Support Document for HWC MACT Standards, Volume V: Emissions Estimates and Engineering Costs," March 2004, Section 4.6, Appendices F and G.

[28] See comments of Sierra Club, docket item EPA–HQ–OAR–2004–0022–0292, page 30.

[29] USEPA, "Response to Comments on April 20, 2004 HWC MACT Proposed Rule, Volume I: MACT Issues," September 2005, pages 152–153.

[30] USEPA, "Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Beyond-the-Floor Evaluations," July 2006.

[31] USEPA, "EPA Air Pollution Control Cost Manual," available at *http://www.epa.gov/ttn/catc/products.html*.

costs, these costs would be assigned to a rejected beyond-the-floor standard.[32] We then evaluated the beyond-the-floor results after reapportioning costs to the remaining co-controlled HAP to determine whether the further emissions reductions are achievable. This iterative process continues until we determine all standards appear achievable or no beyond-the-floor standards appear achievable. This iterative process for co-controlled HAP continues until all remaining co-controlled HAP are judged achievable or no beyond-the-floor standards appear achievable for co-controlled HAP.

Applying this proposed methodology would yield the same results as the methodology used in the final rule. These are beyond-the-floor standards of 68 mg/dscm [33] (0.030 gr/dscf) for existing sources and 34 mg/dscm (0.015 gr/dscf) for new sources, and beyond-the-floor standards for liquid fuel boilers for the dry air pollution control device subcategory of 0.40 ng TEQ/dscm for existing and new sources. Since the standards would not change, we are not reproposing them. We are, however, soliciting comment on the revised methodology for assessing achievability of standards for co-controlled HAP.

As mentioned above, carbon monoxide and hydrocarbons [34] are not included in the comprehensive beyond-the-floor analysis. While a beyond-the-floor technology such as activated carbon injection may provide additional control of certain organic hazardous air pollutants (HAP), we believe it is inappropriate to evaluate (under this comprehensive option) numerical beyond-the-floor standards for carbon monoxide and hydrocarbons. When complying with the current standards for carbon monoxide and hydrocarbons, sources can elect to comply with either standard (e.g., 70 FR at 59410–59411). With respect to the carbon monoxide standard, the use of activated carbon injection (or any other beyond-the-floor techniques evaluated in the comprehensive analysis) would not reduce or affect emissions of carbon monoxide. Thus, there is no way to identify a numerical emissions limit for carbon monoxide that would reflect potential reductions in organic HAP emissions because there is no direct correlation between carbon monoxide and emissions of organic HAP. Given that we cannot identify a numerical beyond-the-floor standard for carbon monoxide and given that the majority of sources elect to comply with the carbon monoxide standard rather than the hydrocarbon standard, we believe it is not appropriate to include carbon monoxide in the comprehensive beyond-the-floor analysis.

We also have concerns about identifying a beyond-the-floor standard for hydrocarbons under this comprehensive option. As we document in the technical support document, a significant percentage of total stack organics (that would be measured by a hydrocarbon monitor) are not organic HAP (e.g., short-chain aliphatic compounds like methane, propane, and acetylene).[35] We estimate that the organic HAP emissions comprise approximately 20% of total hydrocarbon emissions. Furthermore, activated carbon injection is estimated to capture only a small fraction—13%—of the organic HAP emissions. Thus, we estimate that the use of activated carbon injection would reduce organic HAP emissions by less than 3% on average. This estimate would allow us to identify a potential numerical beyond-the-floor standard for hydrocarbons that would reflect reductions achieved by activated carbon injection.[36] However, we believe it would be inappropriate to identify a beyond-the-floor standard as part of the comprehensive analysis because there is much uncertainty in the 3% estimate.[37] Furthermore, there are numerous factors that affect combustion efficiency, and, subsequently, hydrocarbon emissions. Thus, a source may not be able to replicate its hydrocarbon emissions levels (and other sources may not be able to duplicate those emission levels) if the quantity of organic HAP that are amenable to capture with activate carbon injection decreases as a result of one of the many factors that affect combustion efficiency. Finally, given that very few sources elect to comply with the hydrocarbon standard rather than the carbon monoxide standard (a standard for which we cannot identify a numerical beyond-the-floor level based on activated carbon injection), we believe that it is more appropriate to present estimated reductions of organic HAP emissions that would result from an activated carbon injection beyond-the-floor option in lieu of identifying explicit beyond-the-floor standards for carbon monoxide and hydrocarbons.

In its petition for reconsideration, the Sierra Club also opposes inclusion of costs associated with the disposal of spent carbon as a solid and/or hazardous waste when carbon injection is used as a beyond-the-floor control technology.[38] We disagree because disposal costs are one of the many direct costs associated with operating a carbon injection system (as well as an example of a non-air quality health and environmental impact). As mentioned above, our cost estimates are based on standardized and peer reviewed cost models developed by EPA. Indeed, the "EPA Air Pollution Control Cost Manual" includes specific cost inputs for disposal costs not only for the disposal of solid waste from carbon adsorber systems, but also wastewater disposal costs for wet scrubbers for acid gas control, dust disposal cost for baghouses and electrostatic precipitators for particulate matter control, and waste liquid collection and disposal costs for wet scrubbers for particulate matter control.[39] Therefore, the cost estimates presented in the technical support document include disposal costs for certain beyond-the-floor controls.[40]

In summary, we are accepting public comment on the revised beyond-the-floor analyses and the conclusions.

F. Dioxin/Furan Standard for Incinerators With Dry Air Pollution Control Devices

We proposed to subcategorize incinerators between wet or no air pollution control devices and incinerators equipped with dry air pollution control devices or waste heat

[32] Even though costs would be reapportioned under this proposed approach, we note that emissions reductions from a rejected beyond-the-floor standard of a co-controlled HAP would remain a collateral benefit of other accepted co-controlled HAP.

[33] Note that we are proposing to revise this standard from 68 mg/dscm to 69 mg/dscm in today's notice. See Section V. J below.

[34] Carbon monoxide and hydrocarbons are widely accepted indicators of combustion conditions and are used (along with the destruction and removal efficiency standard) as surrogates to control emissions of nondioxin/furan organic hazardous air pollutants.

[35] USEPA, "Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Beyond-the-Floor Evaluations," July 2006, Section 4.

[36] For example, the beyond-the-floor standard for a hydrocarbon MACT floor of 10 ppmv would be 9.7 ppmv.

[37] USEPA, "Draft Technical Support Document for HWC MACT Standards—Reconsideration of the Beyond-the-Floor Evaluations," July 2006, Section 4.1.1

[38] See petition for reconsideration of the Sierra Club, docket item EPA–HQ–OAR–2004–0022–0517, page 26.

[39] USEPA, "EPA Air Pollution Control Cost Manual," EPA/452/B–02–001, January 2002, sections 3.1, 5.2, and 6.

[40] Nonetheless, we also conducted the comprehensive analysis for new sources to investigate the extent that disposal costs of spent activated carbon injection would impact the achievability of potential beyond-the-floor standards. As presented in the technical support document, when disposal costs are (inappropriately) eliminated (reduced to zero), there would be no changes to the conclusions proposed regarding those standards that appear achievable. See "Draft Technical Support Document for HWC MACT Standards " Reconsideration of the Beyond-the-Floor Evaluations," July 2006, Section 5.2.

boilers.[41] See 69 FR at 21214 (This is not subcategorizing on the basis of an emission control technology, but rather on the basis of a basic difference in process). Accordingly, we proposed separate emission standards for each subcategory for incinerators for dioxin/furans.[42] 69 FR at 21240–42. The standard proposed for existing incinerators with dry air pollution control devices or waste heat boilers (the standard at issue in this discussion) was 0.28 ng TEQ/dscm.[43] 69 FR at 21240. As discussed in the proposal, this standard was based on an evaluation of compliance test emissions data of the MACT pool sources comprising this subcategory of incinerators. As noted in the petition of the Sierra Club, one of the five MACT pool sources was the Clean Harbors Aragonite incinerator located in Utah.[44] The consideration of these data in the MACT floor analysis is the specific point in contention in the Sierra Club's petition for reconsideration.

In the final rule, we adopted this same subcategorization scheme and promulgated separate dioxin/furan emissions standards for each subcategory of incinerators. See 70 FR at 59420, 59467. Our revised MACT floor analysis yielded a calculated floor level of 0.42 ng TEQ/dscm, that reflected emissions variability. We then evaluated whether this calculated floor level was less stringent than the interim dioxin/furan standard under § 63.1203(a)(1). Because we concluded the calculated floor level of 0.42 ng TEQ/dscm was less stringent than the interim dioxin/furan standard, we promulgated the interim dioxin/furan standard as the standard.[45] Thus, the emission standard promulgated for existing incinerators with dry air pollution control devices or waste heat boilers was either 0.20 ng TEQ/dscm or 0.40 ng TEQ/dscm provided that the combustion gas temperature at the inlet to the initial particulate matter control device is 400 °F or lower (§ 63.1219(a)(1)). The analyses supporting these standards are included in the technical support document.[46]

As discussed in the final rule, the calculated MACT floor increased from 0.28 ng TEQ/dscm to 0.42 ng TEQ/dscm because we were alerted in comments to the proposed rule that our MACT pool analysis considered dioxin/furan data that should not have been included. Commenters stated that the Clean Harbors Aragonite incinerator (source 327C10 in the data base) encountered problems with its carbon injection system during the emissions test from which the data were obtained and subsequently used in the MACT floor analysis for this incinerator subcategory.[47] We investigated the commenters' claims after proposal and confirmed the problems that were encountered during testing. See 70 FR at 59419, 59432. Importantly, we determined that these dioxin/furan emissions data were not used to establish operating parameter limits for the carbon injection system based on this test.[48] Therefore, we no longer designate this test condition as "compliance test" data, that is the type of data upon which this MACT standard is based. After concluding that these emissions data are not appropriate for inclusion in the MACT floor analysis, we instead substituted in its place other readily available compliance test emissions data in our data base for that facility. While the substituted emissions data are indeed older than the problematic data, these data are the most recent valid compliance data available to us for this source. As a result of this data handling decision, the calculated MACT floor increased as discussed earlier.

The Sierra Club notes in its petition that the promulgated MACT standard for this subcategory of incinerators increased from that proposed as a result of EPA's decision to use different dioxin/furan emissions data from the Clean Harbors Aragonite incinerator. The Sierra Club states that EPA had provided no opportunity to comment on this data handling decision because it was not reflected in the proposed rule. We agree with petitioner Sierra Club that it was impracticable for them to raise its concern about the use of the Clean Harbors Aragonite emissions data. Therefore, we are granting the Sierra Club's petition for reconsideration for this issue.

The Sierra Club contends that EPA's data substitution for the Clean Harbors Aragonite incinerator is arbitrary and capricious because EPA rejected the newer test data to use older and worse test data. The Sierra Club states that a source encountering problems with its air pollution control equipment does not justify using other data from an earlier test with higher emissions because EPA had no reason to conclude that the incinerator would perform worse than the level it achieved while encountering problems.

The arguments presented in the petition for reconsideration have not persuaded us, subject to consideration of further comment, that our MACT floor determination in the final rule was inappropriate. We believe we correctly identified the MACT floor for this incinerator subcategory based on the available emissions data. The Clean Harbors Aragonite data from 2001 cannot be used in the MACT floor analysis because these data simply are not representative of performance due to problems encountered. We note that the substituted Clean Harbors Aragonite data considered in the final rule MACT floor analysis were not included in the pool of the five best performing sources for the dioxin/furan standard. If we had simply excluded the problematic data (and not substituted the older data), then we would have promulgated the identical emission standard because the substituted data for Clean Harbors Aragonite had no direct impact on the floor analysis (i.e., the data were not included in the MACT pool). Nevertheless, because we changed the floor determination between proposal and promulgation in response to comments received on the proposal, and because we also made certain data editing decisions (again in response to public comment) that resulted in a different data base being used for the

[41] In its petition for reconsideration, the Sierra Club also petitioned EPA to reconsider the decision to subcategorize the hazardous waste incinerator source category. As discussed in Section III above, we have denied their request for reconsideration. Therefore, we are neither soliciting comments nor will we consider any comments received on the decision to subcategorize the incinerator category.

[42] Sierra Club also petitioned EPA to reconsider the dioxin/furan standard for the subcategory of incinerators with wet or no air pollution control devices. This standard is not discussed in today's proposed rule because EPA has denied the reconsideration request as discussed in Section III above. Therefore, we are neither requesting comments nor will we consider any comments received on the dioxin/furan standard for incinerators with wet or no air pollution control devices.

[43] See USEPA, "Draft Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," March 2004, Appendix C, Table "E–INC/D+WHB–DF." Note that because the issue raised in the Sierra Club's petition does not affect the dioxin/furan standard for new incinerators, the scope of this discussion will be limited to existing incinerators.

[44] EPA's data base contains emissions data from Clean Harbors Aragonite for six different test conditions. The proposed dioxin/furan standard was based, in part, on the trial burn data from Clean Harbors Aragonite that was conducted in June 2001.

[45] Replacement standards can be no less stringent than existing standards, including the interim standards under §§ 63.1203–1205. See 70 FR at 59457–58.

[46] See USEPA, "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix E, Table "E–INCDWHB–DF."

[47] See USEPA, "Response to Comments on April 20, 2004 HWC MACT Proposed Rule, Volume I, MACT Issues," September 2005, Section 1.3.2, and "Technical Support Document for the HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Section 10.1.1.

[48] See docket item EPA–HQ–OAR–2004–0022–0401.

floor determination than we used at proposal, we are requesting public comments on the MACT floor analysis that supported the final rule. Specifically, we are soliciting comment on the final rule MACT floor analysis that included our decision to replace the 2001 Clean Harbors Aragonite data with other dioxin/furan emissions data in our data base.

Because we are proposing to retain the final rule MACT floor analysis for the subcategory of incinerators equipped with dry air pollution control devices or waste heat boilers, the emission standards promulgated for dioxin/furans under § 63.1219(a)(1)(i) and (b)(1)(i) would not change (subject to consideration of public comment).

G. Provisions of the Health-Based Compliance Alternative

The final rule allows you to establish and comply with health-based compliance alternatives for total chlorine for hazardous waste combustors other than hydrochloric acid production furnaces in lieu of the MACT technology-based emission standards established under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. See 70 FR at 59413–19 and § 63.1215.

Sierra Club petitioned for reconsideration stating that EPA changed several provisions of the health-based compliance alternative after the period for public comment and therefore did not provide notice and opportunity for public comment.[49] In addition, Sierra Club states that three new provisions are problematic: (1) It is unlawful to allow sources to comply with the health-based compliance alternative without prior approval from the permitting authority; (2) it is unlawful to allow a source to obtain an unlimited extension of the compliance date if their eligibility demonstration is disapproved and the source is unable to change the design or operation of the source to comply with the MACT emission standards by the compliance date; and (3) the Agency cannot rely on the Title V program as the vehicle for establishing health-based compliance alternatives.

We are granting reconsideration of these provisions because we developed them in response to comments on the proposed rule, after the period for public comment as Sierra Club states. Furthermore, to address Sierra Club's concerns, we are proposing to revise the rule pertaining to these provisions as follows: (1) The rule would state that the operating requirements specified in the eligibility demonstration are "applicable requirements" as defined in 40 CFR 70.2 or 71.2 and therefore must be incorporated in the Title V permit; (2) a source may comply with the health-based compliance alternative without prior approval from the permitting authority provided that the source has made a good faith effort to provide complete and accurate information and to respond to any requests for additional information; and (3) the compliance date extension cannot exceed one year if the eligibility demonstration is disapproved and the source is unable to change the design or operation to comply with the MACT emission standards by the compliance date. These provisions are discussed below.

Note that we are accepting further comment on these provisions in general in addition to requesting comment on the proposed revisions to the provisions. We believe the provisions in general are warranted for the reasons provided in the final rule and restate these reasons below. Nonetheless, we are open to comment and will determine whether changes are warranted other than those we are proposing.

1. Complying With the Health-Based Compliance Alternative Without Prior Approval From the Permitting Authority Would Be Conditional

The final rule does not require prior approval of the eligibility demonstration for existing sources. If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may nonetheless begin complying, on the compliance date, with the HCl-equivalent emission rate limits and associated chlorine feedrate limits you present in your eligibility demonstration. See 70 FR at 59484 and § 63.1215(e)(2)(i)(C).

We are today providing an opportunity to comment on this provision in general and on a proposal to revise the rule to clarify that a time extension is conditioned on your making a good faith effort to submit complete and accurate information and to respond in a timely manner to any requests for additional information.

Many commenters on the proposed rule stated that requiring prior approval of the eligibility demonstration would be unworkable. Commenters were concerned that the permitting authority may not approve the demonstration prior to the compliance date, even though the source has submitted complete and accurate information and has responded to any requests for additional information in good faith. A commenter suggested that, if the permitting authority has neither approved nor disapproved the eligibility demonstration by the compliance date, the source may begin complying on the compliance date with the alternative health-based limits specified in the eligibility demonstration.

We agreed with commenters that requiring prior approval of the eligibility demonstration may be unworkable for the reason commenters suggested. Accordingly, the final rule does not require prior approval of the eligibility demonstration for existing sources. If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may nonetheless begin complying, on the compliance date, with the HCl-equivalent emission rate limits and associated chlorine feedrate limits you present in your eligibility demonstration.

When reviewing this provision in response to Sierra Club's petition for reconsideration, we noticed that the regulatory language at § 63.1215(e)(2)(i)(C) simply stated that you could begin complying on the compliance date with the health-based alternative compliance requirements absent approval from the permitting authority if the permitting authority had not issued a notice of approval or intent to disapprove your eligibility demonstration by the compliance date. We inadvertently did not make the provision conditional on your making a good faith effort to provide complete and accurate information and to respond to any requests for additional information in a timely manner. Accordingly, we propose today to revise that regulatory provision to say:

- If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may begin complying, on the compliance date, with the HCl-equivalent emission rate limits you present in your eligibility demonstration provided that you have made a good faith effort to provide complete and accurate information and to respond to any requests for additional information in a timely manner.

If the permitting authority believes that you have not made a good faith effort to provide complete and accurate information or to respond to any requests for additional information, the authority may notify you in writing by the compliance date that you have not

[49] See letter from James Pew to Stephen Johnson, dated December 12, 2005, Section XII, docket item EPA–HQ–OAR–2004–0022–0517.

met the conditions for complying with the health-based compliance alternative without prior approval.

2. An Extension of the Compliance Date Granted Upon Disapproval of an Eligibility Demonstration Cannot Exceed One Year

The final rule states that the permitting authority should notify you of approval or intent to disapprove your eligibility demonstration within 6 months after receipt of the original demonstration, and within 3 months after receipt of any supplemental information that you submit. A notice of intent to disapprove your eligibility demonstration, whether before or after the compliance date, will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time you will have to submit additional information or comply with the total chlorine MACT standards. The permitting authority may extend the compliance date of the total chlorine MACT standards to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the total chlorine MACT standards. See 70 FR at 59484 and § 63.1215(e)(2)(i)(B) and (D).

We are today providing an opportunity for comment on this provision in general and on a proposal to revise the rule to limit the time extension to (up to) one year. We are tentatively persuaded by Sierra Club's argument that this limitation is needed to be consistent with CAA section 112(i)(3)(B) (and the General Provisions under Subpart A—§ 63.6(i)(4)(i)(A)).

Commenters on the proposed rule were concerned that the permitting authority may disapprove the eligibility demonstration for the health-based compliance alternative too late for the source to make changes to the design or operation of the combustor or related systems to enable the source to comply with the total chlorine MACT standard. See 70 FR at 59484. We agreed with that concern and therefore allowed the permitting authority to extend the compliance date. We inadvertently did not limit the extension of the compliance date to one year, however, consistent with the General Provisions and CAA section 112(i)(3)(B).

3. The Health-Based Compliance Alternative Requirements Are Applicable Requirements

We stated in the preamble to the final rule in response to comments that, because the health-based compliance alternative requirements are clearly defined (*e.g.*, HCl-equivalent emission limits, chlorine feedrate limits), and because any standards or requirements created under CAA section 112 are considered applicable requirements under 40 CFR part 70, the compliance alternatives would be incorporated into Title V permits. See 70 FR at 59481.

Nonetheless, petitioner Sierra Club states that the Agency cannot rely on the Title V program as the vehicle for establishing health-based compliance alternatives.

We are today providing an opportunity for comment on this provision in general and on a proposal to revise the rule to add clarifying regulatory language stating that § 63.1215 requirements are applicable requirements under part 70 and therefore must be included in the Title V permit as would any other applicable requirement. We note that the final rule specifies that operating requirements in the Notification of Compliance are applicable requirements for purposes of parts 70 and 71 of this chapter, and that the operating requirements specified in the Notification of Compliance will be incorporated in the Title V permit. See § 63.1206(c)(1)(iv)–(v). The health-based compliance alternative is implemented using an eligibility demonstration that is independent from the Notification of Compliance. See § 63.1215(c) and (e). Accordingly, we propose today to add new § 63.1215(e)(3) to clarify that the health-based compliance alternative requirements established in an approved eligibility demonstration are applicable requirements and must be included in the Title V permit.

V. Other Proposed Amendments

A. Sunset Provision for the Interim Standards

In the preamble to the final rule (70 FR at 59503) we indicated in response to a comment that we were including a sunset provision for the interim standards in the final rule. However, that provision was inadvertently omitted from the rule. In today's rule we propose to incorporate sunset provisions into §§ 63.1203, 63.1204, and 63.1205. As indicated in the referenced preamble, the Interim Standards will be superseded by the final replacement standards on the compliance date for the replacement standards. See proposed additions to §§ 63.1203(e), 63.1204(i), and 63.1205(e).

B. Operating Parameter Limits for Sources With Fabric Filters

In the final rule, we promulgated a new paragraph § 63.1206(c)(8) that sets forth operating parameter limits for sources equipped with a baghouse (fabric filter) (70 FR at 59486). If you use a baghouse to comply with one or more emission standard(s), you are either required to use a bag leak detection system that meets the specifications of § 63.1206(c)(8)(ii), or meet the particulate matter detection system requirements specified in § 63.1206(c)(9). However, the current language of § 63.1206(c)(9) appears to restrict the particulate matter detection system requirement to electrostatic precipitators and ionizing wet scrubbers. This was never our intent. Consequently, in today's notice we are proposing to amend § 63.1206(c)(9) to include baghouses.

C. Confirmatory Performance Testing Not Required for Sources That Are Not Subject to a Numerical Dioxin/Furan Emission Standard

Section 63.1207(b)(3) of the final rule requires a one-time only test for dioxin/furan emissions for those sources that are not required to meet a numerical dioxin/furan emission standard. You are only required to repeat this test if you change the design or operation of the source in a manner that may increase dioxin/furan emissions. Because dioxin/furan testing is the only component of the confirmatory performance test (see § 63.1207(b)(2)), it logically follows that confirmatory performance testing is not required for these sources. Nevertheless, the final rule did not include an explicit exemption from the confirmatory performance test requirement. In today's notice, we are proposing to add a new paragraph (vi) to § 63.1207(b)(3) to clarify this point.

D. Periodic Performance Tests for Phase I Sources

Section 63.1207(d)(1) requires periodic comprehensive performance testing to begin no later than 61 months after commencing the previous comprehensive performance test. Section 63.1207(d)(2) requires confirmatory performance testing to begin no later than 31 months after commencing the previous performance test. However, in the Interim Standards Rule, promulgated on February 13, 2002, we added § 63.1207(d)(4) that waived these periodic test requirements under the interim standards (67 FR at 6815).

Section 63.1207(d)(4) also includes language reinstating the periodic test requirements upon promulgation of the final replacement standards (*i.e.*, October 12, 2005). Our intent was to reinstate periodic testing only for sources operating under the October 12, 2005 replacement standards, not the

interim standards. However, the current language could also be misinterpreted to require periodic testing by sources that remain under the interim standards. In today's rule, we propose to amend § 63.1207(d) to clarify that periodic comprehensive performance testing and confirmatory performance testing are only required for sources operating under the final replacement standards. For the reasons discussed in the preamble to the interim standards rule (67 FR at 6802), periodic testing is not required for sources that remain operating under the interim standards.

E. Performance Test Waiver for Sources Subject to Hazardous Waste Thermal Concentration Limits

In the 1999 final rule (64 FR at 52828), we waived the performance test requirement for mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas for sources that demonstrated that the maximum theoretical emission concentration (MTEC) did not exceed the emission standard for that HAP. See § 63.1207(m). In essence, this provision waives the performance test if the constituent feed rate (after conversion to an exhaust gas concentration using continuously monitored exhaust gas flow data) is less than the applicable emission rate, assuming that 100% of the constituent in the feed is emitted from the combustion unit.

In the 2005 final rule (70 FR at 59402), for certain source categories (*i.e.*, liquid fuel boilers, cement kilns, and lightweight aggregate kilns), we limited the feedrate of these same constituents in proportion to the heat input from hazardous waste. See, for example, § 63.1217(a)(2)(ii). We refer to these as hazardous waste thermal concentration emission limits.[50] In today's notice, we propose to amend § 63.1207(m) to waive performance tests for any constituent whose thermal concentration in the waste feed is at or below the applicable thermal concentration emission limit. This is analogous to the performance test waiver for sources that comply with MTEC standards. Although performance tests would not be required, the thermal concentration emission limits would remain in effect during source operations.

[50] Note that are granting reconsideration of the decision to subcategorize the liquid fuel boiler source category by heating value, which includes standards based on this potential normalizing parameter. See Section IV.A above.

F. Averaging Method When Calculating 12-Hour Rolling Average Thermal Concentration Limits

The replacement standards for cement kilns and lightweight aggregate kilns limit the emissions of semivolatile metals (cadmium and lead) and low volatile metals (arsenic, beryllium, and chromium) from hazardous waste feeds relative to the heating value of those feeds. In order to monitor compliance with those requirements, § 63.1209(n)(2)(iii) requires the source to establish a 12-hour rolling average feedrate limit for those metals on a thermal concentration (*e.g.*, pounds per million British thermal unit) basis. The limits are derived from operating levels during the comprehensive performance test.

For reasons discussed in the 1999 final rule (64 FR at 52922), EPA has consistently required sources to calculate most of their operating parameter limits as the average of each relevant test run average recorded during the comprehensive performance test. Section 63.1209(n)(2)(iii) describes how to calculate the average thermal concentration of metals for each test run, but it does not explicitly describe how to calculate the thermal concentration limit. In today's notice, we are proposing to amend § 63.1209(n)(2)(iii) to indicate that the metal thermal concentration limit is the average of the individual test run averages.

G. Calculating Rolling Averages for Averaging Periods in Excess of 12 Hours

The final rule allows operators of liquid fuel boilers to average certain feed rate limits over a period of up to one year. This applies to the mercury and semivolatile feed rate limits. §§ 63.1209(n)(2)(v)(A)(iv) and (n)(3)(v) as well as §§ 63.1209(l)(1)(ii)(B)(5) and (l)(1)(C)(5) all describe the same method for calculating averages of longer than 12 hours upon initial compliance with the rule. They require that you calculate the average of all 1-minute average values until you have acquired data for the full averaging period (*i.e.*, up to one year). Thereafter, you are required to update this value each hour using the 60-minute average feedrate from the previous hour.

EPA recognizes that these approaches may needlessly complicate data management and could require increased data storage. Therefore, we are proposing to amend these sections of the regulation in two ways. The first change will explicitly allow you to calculate long-term rolling averages using only the 1-minute data that you are otherwise required to record. If you choose this approach, you would calculate long-term averages in exactly the same manner as all other rolling averages, with the value being updated every minute. There would be no requirement to switch to a different system after completion of the initial averaging period. Alternatively, you may still choose to use the hourly update option specified in the current regulations. If you choose this latter option, however, we are proposing to allow you to begin using hourly updates after completing at least 12 hours of monitoring using 1-minute updates. (The current regulation only allows hourly updates after completing the first long-term averaging period, that could be up to one year.) We believe that this will allow you to begin "normal" monitoring operations as soon as possible without any significant effect on accuracy.

We wish to emphasize that the definition of continuous monitor requires that you maintain all one-minute average values in your operating record regardless of whether you elect one-minute or hourly updates to the rolling average. Pursuant to § 63.10(b)(1) of the MACT General Provisions, these data must be retained for a period of at least five years.

H. Calculating Rolling Averages

Most of the feed rate, emission rate, and operating parameter limits established in the HWC MACT rule are monitored on a rolling average basis that varies from hourly to annually. Continuously monitored parameters must be recorded at least once each minute. The rolling average is then calculated as the average of the one-minute values for the duration of the most recent averaging period. For example, a one-hour rolling average temperature value would be calculated by averaging the 60 most recent one-minute temperature readings, with a new hourly rolling average value being generated every minute.

In the 1999 final rule, the longest permissible rolling average period was 12 hours. However, in the 2005 final rule, we allowed up to annual averaging for those emission standards that are based on "normal" feed data. (See the liquid fuel boiler standards for mercury and semivolatile metals under § 63.1217.) In recognition of the fact that these long-term averages would not vary significantly over short time periods, we chose to allow you to update these rolling averages hourly, rather than every minute. Our intent was to retain one-minute updates for averaging periods up to 12 hours while allowing

hourly updates for longer averaging periods. However, we inadvertently specified hourly updates for several parameters that are not subject to long-term (i.e., greater than 12-hour) averaging. This occurred for three parameters: the chromium feedrate in liquid fuel boilers burning hazardous waste with a heating value of 10,000 Btu per pound or greater under § 63.1209(n)(2)(v)(B)(1)(i), the chromium feedrate in liquid fuel boilers burning hazardous waste with a heating value of less than 10,000 Btu per pound under § 63.1209(n)(2)(v)(B)(2), and the chlorine thermal concentration feedrate limit for liquid fuel boilers burning hazardous waste with a heating value of not less than 10,000 Btu per pound under § 63.1209(o)(1)(ii)(A)(3). In today's notice, we are proposing to delete the hourly update references for these three parameters.

I. Timing of the Periodic Review of Eligibility for the Health-Based Compliance Alternatives for Total Chlorine

If you choose to comply with the health-based compliance alternatives for total chlorine, § 63.1215(h)(2)(i) requires you to review your eligibility under that alternative at least every five years. The results must be submitted to the regulatory authority for review and approval. However, there is some ambiguity in the exact timing of that submission in the current regulatory language.

In this action, we propose to eliminate the ambiguity by amending § 63.1215(h)(2)(i) to indicate that the results of your 5-year review are due to the permitting authority at the time you submit your comprehensive performance test plan (as specified in the current rule). This will most likely be approximately four years (not five, as indicated in the current rule) after your last comprehensive performance test.

J. Expressing Particulate Matter Standards Using the International System of Units (SI)

In the final rule, we expressed the particulate matter standards for incinerators, cement kilns, and lightweight aggregate kilns using English units (gr/dscf) while expressing the particulate matter standards for liquid and solid fuel boilers using SI units (mg/dscm). Our preference is to express all particulate matter standards in SI units and we are proposing to revise the particulate matter standards in §§ 63.1216 through 63.1221 by expressing the standards in SI units.[51] When making the conversion from English units to SI units, we are proposing to convert the calculated particulate matter results prior to the step in which the results were rounded to two significant figures. For example, the calculated MACT floor for existing incinerators was 0.0133 gr/dscf, that was rounded to 0.013 gr/dscf (the latter being the promulgated standard).[52] Thus, our proposed approach would convert 0.0133 gr/dscf to SI units. We believe this approach for converting English to SI units more accurately reflects the MACT standards identified in the final rule because making the conversion to SI units after rounding the results (in English units) can introduce imprecision. In addition, we also would recalculate and revise as necessary the liquid and solid fuel boiler standards using the same approach (i.e., existing solid fuel boilers and existing liquid fuel boilers). The table below shows the results of the conversion to SI units.

PROPOSED PARTICULATE MATTER STANDARDS EXPRESSED IN SI UNITS

Source category	Type of source	Promulgated standard	Proposed standard in SI units
Solid Fuel Boilers (§ 63.1216)	Existing	68 mg/dscm	69 mg/dscm
	New	34 mg/dscm	34 mg/dscm
Liquid Fuel Boilers (§ 63.1217)	Existing	80 mg/dscm	79 mg/dscm
	New	20 mg/dscm	20 mg/dscm
Incinerators (§ 63.1219)	Existing	0.013 gr/dscf	30 mg/dscm
	New	0.0015 gr/dscf	3.5 mg/dscm
Cement Kilns (§ 63.1220)	Existing	0.028 gr/dscf	65 mg/dscm
	New	0.0023 gr/dscf	5.3 mg/dscm
Lightweight Aggregate Kilns (§ 63.1221)	Existing	0.025 gr/dscf	57 mg/dscm
	New	0.0098 gr/dscf	22 mg/dscm

We acknowledge that several of the particulate matter standards shown in the table above may be revised as a result of the reconsideration of the particulate matter standard for new cement kilns (71 FR at 14665). If any particulate matter standards are revised, we would apply the same procedure to convert the new standards to SI units.

Accordingly, we propose to revise the following particulate matter standards: §§ 63.1216(a)(7); 63.1217(a)(7); 63.1219(a)(7) and (b)(7); 63.1220(a)(7)(i) and (b)(7)(i); and 63.1221(a)(7) and (b)(7).

K. Mercury Standards for Cement Kilns

In the final rule, we intended to establish a two-pronged approach for controlling mercury emissions from cement kilns. See preamble discussion at 70 FR at 59468. Step one establishes a maximum concentration of mercury in the hazardous waste feed. Step two allows the source to choose between either a traditional approach of limiting the total mercury feed rate and relevant operating parameters, or a maximum theoretical emission concentration (MTEC) approach. The MTEC is calculated as described in § 63.1207(m)(2) except that, in this case, it is calculated for the hazardous waste feed(s) only.

Although we believe that the preamble description of this approach is clear, the regulatory language, promulgated in §§ 63.1220(a)(2) and (b)(2), is not.[53] Our intent was to require all affected cement kilns to comply with § 63.1220(a)(2)(i). In addition, the source has the option of complying with either § 63.1220(a)(2)(ii) or (a)(2)(iii). However, the current language could be misinterpreted to allow the source to comply only with § 63.1220(a)(2)(iii).

[51] We are not proposing to revise the particulate matter standards in §§ 63.1203 thru 63.1205 because affected sources are already complying with these standards.

[52] See USEPA, "Technical Support Document for HWC MACT Standards, Volume III: Selection of MACT Standards," September 2005, Appendix F, Table "APCD–INC–PM."

[53] For brevity, the remaining regulatory citations refer only to the standards for existing cement kilns. However, the same changes are proposed for both existing and new kilns.

Today, we are proposing to amend § 63.1220(a)(2) to more clearly reflect our original intent. Conforming changes to the mercury monitoring requirements of § 63.1209(l)(1)(iii) and (iv) are also proposed.

L. Facilities Operating Under RCRA Interim Status

In response to the proposed rule (69 FR at 21198), one commenter expressed concern that sources operating under Resource Conservation and Recovery Act (RCRA) interim status would have to obtain approval of the RCRA implementing authority before proceeding with facility modifications required to meet the MACT standards. The commenter noted that delays in gaining that approval would adversely affect a source's ability to comply with the MACT standards on time. We responded to this issue in our response to comments document.[54] However, we did not address it in either the preamble or the final rule itself. Consequently, this appears to be an ongoing source of confusion among affected sources, as well as some regulatory agencies. In order to promote consistent interpretation of the RCRA interim status requirements across all jurisdictions, the discussion that follows reiterates EPA's long-standing position previously set forth in the comment response document. States are strongly encouraged to adhere to this interpretation in order to facilitate timely compliance with the HWC MACT replacement standards.

At issue here is the interpretation of § 270.72(a)(3), that requires sources operating under interim status to obtain approval from the regulatory authority for "Changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes * * *" The term "process" refers to the general category of waste treatment, storage, or disposal (*e.g.*, incinerator, cement kiln, boiler, etc.) as indicated on the Part A permit form (EPA Form 8700–23). It does not include air pollution control devices, monitoring equipment, or process controls, none of which are identified on the Part A form. Consequently, changes to those monitoring and control systems do not require approval under § 270.72(a)(3). Neither would a change in operating conditions (*e.g.*, an increase in the combustion temperature) be subject to § 272.72(a)(3) because operating conditions are also not included in the Part A permit form.

We note that sources subject to the boiler and industrial furnace (BIF) requirements (40 CFR part 266, subpart H) under RCRA would be required to submit revised certifications of compliance when making any changes that could affect emissions or operating parameter limits. However, those changes do not require prior approval of the regulatory authority so they should not impede your compliance with the HWC MACT standards.

VI. Revised Time Lines

The time line labeled as Figure 1 published in the final rule at 70 FR at 59524, depicts an incorrect "effective" date for the Phase 1 Replacement Standards and Phase 2 Standards final rule. As a result, all subsequent dates on the time line are also incorrect. The time line labeled as Figure 2 published in the final rule at 70 FR at 59525 incorrectly includes the rule's effective date, as well as subsequent dates based on the effective date. Today's notice revises both time lines to reflect the correct dates or time frames associated with the compliance activities for both Phase 1 and Phase 2 sources. In addition to revising the dates, we felt it would be helpful to include the following remarks for both Figures 1 and 2.

With respect to figure 1, the time line is now broken into three sections to reflect the separate requirements (*i.e.*, different time frames) negotiated for Phase 1 sources for the Replacement Standards. The first section of the time line, beginning with the promulgation date, provides compliance activities and dates applicable to both Phase 1 and Phase 2 sources. The second and third portions of the time line represent Phase 1 and Phase 2 sources individually, beginning with the first compliance activity that specifies a different deadline; that is, the comprehensive performance test (CPT) plan and continuous monitoring system (CMS) performance evaluation test plan due date.

Note that the dates on the time line generally do not apply to sources that elect to comply with the final standards early, as well as to sources that have received site-specific compliance date or performance test date extensions. Also, as a result of expanding the time line into three sections from the previous two, we have removed the note at the bottom of the page, identified by an asterisk that discussed Title V requirements, to provide better visual clarity. Rather, we have chosen to reiterate it here in this notice. Therefore, for the activity identified as *Include NOC in Title V Permit*, we note that because of the variability of the Title V program requirements, most Title V permit actions (application due dates, revisions, reopenings, etc.) are not included in this time line. Please refer to the particular source's current Title V permit status, Title V regulations, and individual permitting authority's requirements.

Finally, the compliance activity dates that are tied to when sources commence their performance test are identified with an asterisk. We characterize these dates as "no later than dates." This assumes that the source commences testing on the last allowable day. All compliance activities marked with an asterisk would therefore shift back by the number of days the source commences testing prior to the last allowable day. For example, if a Phase 2 source commences testing on April 4, 2009 (versus the 14th, which is the last allowable day without an extension), then it must submit its CPT plan and CMS performance evaluation test plan on April 4, 2008. Also, that source must complete its CPT by June 4, 2009 and submit its notification of compliance no later than September 4, 2009.

In regard to Figure 2, we have removed the dates from the time line, since they would not be representative of a new unit's compliance deadlines. A new unit's compliance activity deadlines are based on when it begins operations, which is the unit's compliance date and the date it must place a Documentation of Compliance in the operating record. Thus, the effective date of the rule is not applicable to new units and consequently, the Notice of Intent to Comply (NIC) provisions in §§ 63.1210(b)(3) and (c)(1) that specify a deadline based on the effective date of the rule, also would not apply. Since we have always intended that new units follow the same NIC procedures as existing units, we have revised §§ 63.1210(b)(3) and (c)(1) to also include the period of time between the NIC activities so that they correctly apply to both existing and new units. (See Section VII.C (Clarifications to the NIC Provisions for New Units) below for additional discussion.) The time line now reflects the period of time that elapses between public review of the draft NIC and CPT plan, the NIC public meeting, and the final NIC submission deadline. Aside from the corrections

[54] USEPA, "Response to Comments on April 20, 2004 HWC MACT Proposed Rule, Volume IV: Permitting," September 2005, Pages 16–17.

made to this time line, we would like to remind readers that the preamble to the final rule contains a detailed discussion of the compliance activities listed on Figure 2. See 70 FR at 59522–59523.

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Figure 1. Time Line for Phase 1 Replacement Standards and Phase 2 Standards – Existing Sources

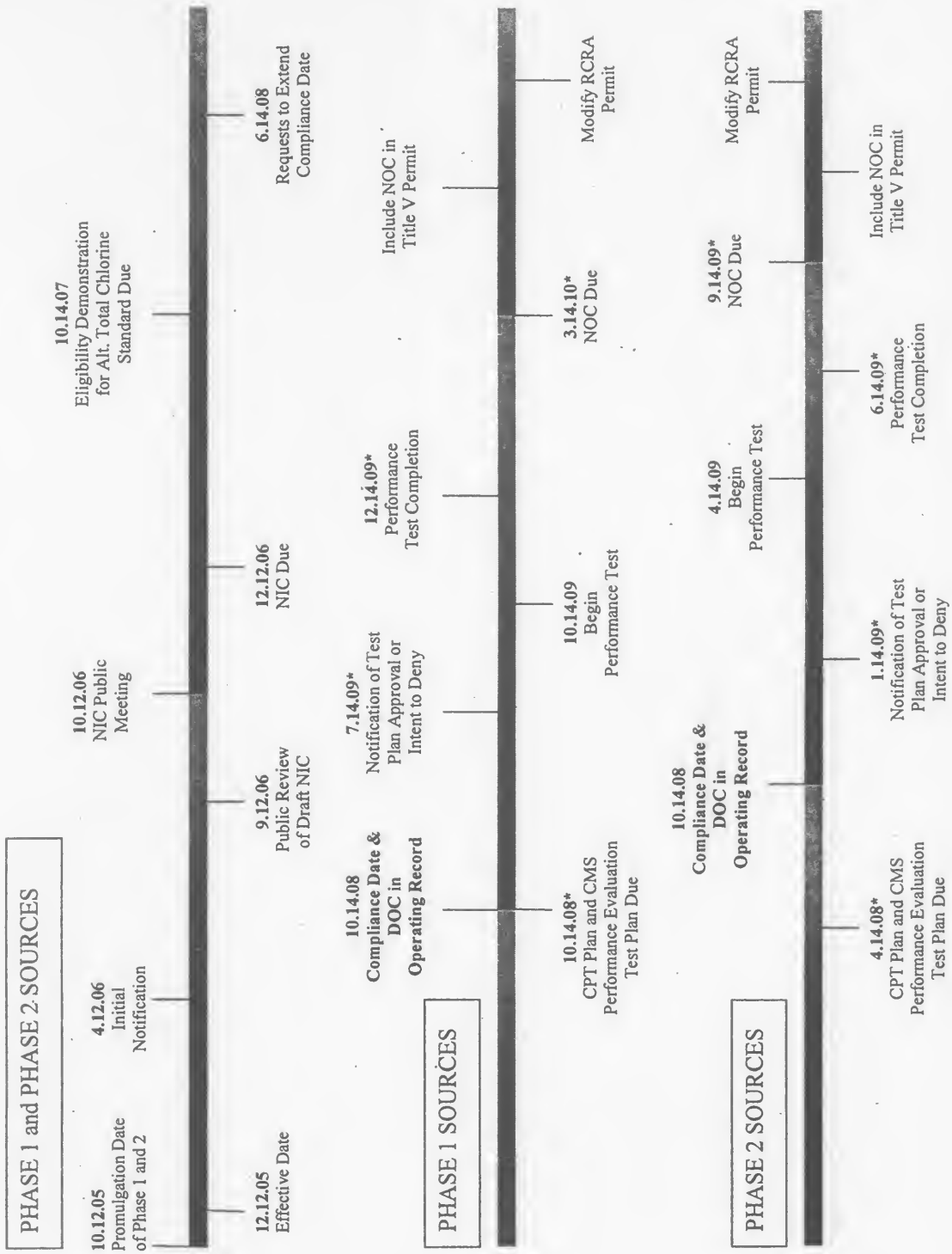

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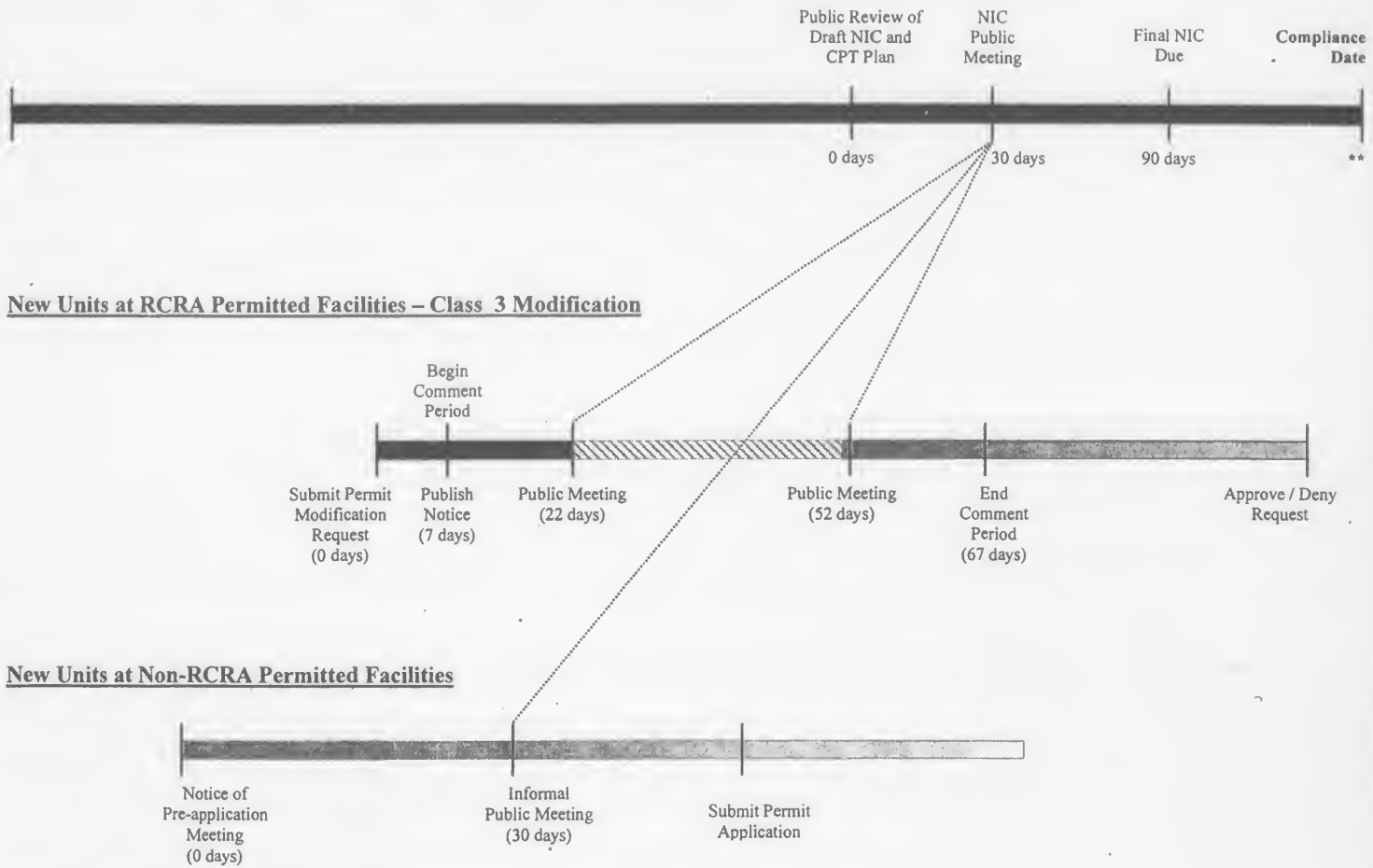
Figure 2. NIC and CPT Plan Time Line - New Units



** This is the date a new unit begins operations and places a documentation of compliance in its operating record.

VII. Technical Corrections and Other Clarification

We identified minor drafting errors and inadvertent omissions after promulgation of the HWC NESHAP. In this section we are providing advance notice of technical corrections that we plan to promulgate when we take final action on this proposed rule. In addition, we provide clarification of the applicability of Title V permit requirements to Phase 2 area sources.

A. What Typographical Errors Would We Correct?

We would revise § 63.1206(a)(2)(ii)(A) to correct the cut-off date after which a new or reconstructed source is subject to the new source emission standards. Currently, this paragraph incorrectly specifies October 12, 2005, which is the date the final rule was published, instead of April 20, 2004, which is the date the proposed rule was published. See proposed revision to § 63.1206(a)(2)(ii)(A).

We also would correct the paragraph heading to § 63.1206(a)(2) that currently refers to "hydrogen chloride production furnaces" instead of "hydrochloric acid production furnaces." See proposed revision to § 63.1206(a)(2). In addition, we would correct a provision that inadvertently uses incorrect terminology when referring to emissions of "hydrogen chloride and chlorine gas." See proposed revision § 63.1206(b)(16).

We also would revise § 63.1210(b) to clarify that the public meeting and notice requirements of the notice of intent to comply (NIC) provisions under paragraph (c) of this section do not apply to sources that have already submitted their NIC. We would also revise § 63.1210(b) to make clear that the NIC certification requirements under § 63.1212(a) likewise do not apply to sources that have already submitted their NIC. See proposed revision to § 63.1210(b).

We also would correct the formula under § 63.1215(b)(2) that is used to calculate the annual average toxicity-weighted HCl-equivalent emission rate for each hazardous waste combustor under the health-based compliance alternatives for total chlorine. The formula uses incorrectly the term ER_{tw} instead of ER_{LTtw} for the annual average HCl toxicity-weighted emission rate considering long-term exposures. See proposed revision to § 63.1215(b)(2).

We also would correct several other typographical errors in § 63.1215. First, paragraph (b)(6)(ii)(C) would be revised by replacing the word "the se" with "these" and the term "Method 26/26a" with "Method 26/26A." Additionally, paragraph (f)(5)(ii)(A) would be revised by replacing the word "you" with "your." Finally, we would revise paragraphs (a)(2) and (b)(3) so that the term "aREL" (acute reference exposure level) is used consistently throughout § 63.1215. See proposed revisions to §§ 63.1215(a)(2), (b)(3), (b)(6)(ii)(C) and (f)(5)(ii)(A).

We also would revise the total chlorine standards for existing and new liquid fuel boilers that burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater by expressing the emission standard with two significant figures. Currently, the total chlorine standards under §§ 63.1217(a)(6)(ii) and (b)(6)(ii) are expressed with three significant figures. This is inconsistent with how emission standards are expressed in the HWC NESHAP (see § 63.1217(d) and 64 FR at 52848). Therefore, we would revise the total chlorine standard from 5.08E–02 to 5.1E–02 lb combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste. See proposed revisions to § 63.1217(a)(6)(ii) and (b)(6)(ii).

B. What Citations Would We Correct?

We would revise an incorrect citation in § 63.1206(b)(14)(iv) that refers inadvertently to paragraphs (e)(2) and (e)(3) instead of (b)(14)(ii) and (iii) in § 63.1206. See proposed revision to § 63.1206(b)(14)(iv).

Paragraphs (g)(2)(i) and (ii) under § 63.1209 refer inadvertently to paragraph (g)(2)(iv) instead of (g)(2)(v). We would revise these incorrect citations. See proposed revisions to §§ 63.1209(g)(2)(i) and (ii).

We also would revise an incorrect citation in § 63.1209(n)(2)(vii) that refers inadvertently to paragraphs (l)(1)(i) through (iii) instead of (n)(2)(ii) through (vi). See proposed revision to § 63.1209(n)(2)(vii).

We also would revise an incorrect citation in § 63.1215(a)(1)(i). This paragraph refers inadvertently to paragraph (b)(4) instead of (b)(7) of § 63.1215. See proposed revision to § 63.1215(a)(1)(i).

In the final rule, we amended § 264.340(b) by adding a new paragraph (b)(5) stating that the particulate matter standard under § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standards under §§ 63.1206(b)(14) and 63.1219(e). However, the addition of paragraph (b)(5) included a requirement that was redundant to existing requirements under paragraph (b)(3) of that same section. We would remove this redundancy by combining the requirements of paragraphs (b)(3) and (b)(5) into a revised paragraph (b)(3). See proposed revision to § 264.340(b).

We also would revise an incorrect citation in § 266.100(b)(3) that contains two subparagraphs designated as (b)(3)(ii). This revision would redesignate the second paragraph (b)(3)(ii) as (b)(3)(iii). See proposed revision to § 266.100(b)(3).

C. Corrections to the NIC Provisions for New Units

In the final rule, we established additional Notice of Intent to Comply (NIC) provisions for new units to ensure that the public would be provided opportunities to participate early in the regulatory development process. This included providing the public with combustor-specific information equivalent to what would be required via the RCRA permitting process for hazardous waste combustors. Recall that we no longer require new units to develop trial burn plans and provide suggested conditions for the various phases of operation in their permit applications or permit modification requests. See 70 FR at 59520. The NIC provisions for new units, located under §§ 63.1212(b) and (c), were developed with the above in mind.

While revising the time line for new units (see Figure 2 shown above in Section VI (Revised Time Lines)) it became apparent that we overlooked the fact that the final rule's effective date has no bearing on new units. A new unit's compliance activity deadlines are based on when it begins operations, which is the unit's compliance date and the date it must place a Documentation of Compliance in the operating record. Therefore, the NIC deadlines are only based upon each individual NIC compliance activity. For example, the clock will begin when the new unit provides the draft NIC and draft CPT plan to the public for review. Once the draft NIC and draft CPT plan are made available for public review, the combined public meeting must occur 30 days later, followed by the final NIC submission an additional 60 days later. Since the public meetings for the NIC and the RCRA pre-application or modification request must occur simultaneously, we anticipate that the new unit will plan accordingly and work with its permitting authorities to determine the most suitable time to begin the NIC compliance process.

Although the time line for new units has been corrected to remove the effective date and the dates listed for the NIC activities, the NIC regulatory

language in § 63.1210(b)(3) and (c)(1) must be amended to also account for new units. While the additional NIC provisions for new units are located in § 63.1212(b) and (c), they contain several references to the core NIC provisions in § 63.1210(b) and (c). Obviously, we have always intended that new units follow the same NIC procedures as existing units, in additionto the supplemental requirements for new units. In developing the additional requirements under § 63.1212, we inadvertently neglected to revise § 63.1210(b)(3) and (c)(1) to include a specific number of days between NIC compliance activities in addition to the effective date. Therefore, the NIC provisions under §§ 63.1210(b)(3) and (c)(1) would be revised to correctly apply to both existing and new units.

Lastly, upon review of the regulations at § 63.1212, we have discovered that paragraph (b)(4) should have included references to § 63.1210(c)(1) and (c)(2). As discussed above, it has always been our intent that new units follow the same NIC procedures as existing units. However, without the proper references in § 63.1212(b)(4), the requirements of § 63.1210(c)(1) and (c)(2) could be read to not apply to new units. Section 63.1212(b)(4) would be revised to clarify that the core NIC provisions continue to be applicable. Also, § 63.1212 (b)(1) would be revised to remove "according to" and "per" and add the words "pursuant to" so that it is consistent with other paragraphs in (b); and § 63.1212(b)(3) would be revised to correct a typographical error.

D. Clarification of the Applicability of Title V Permit Requirements to Phase 2 Area Sources

In the preamble to the final rule, we discuss the applicability of Title V permit requirements to Phase 2 area sources (see 70 FR at 59523). For example, we note that in the 2004 proposal we stated that we were not making a positive area source finding for Phase 2 area sources as we have for Phase 1 area sources (69 FR at 21212 and 21325). Regardless of this, however, we explain that Phase 2 area sources are still subject to the requirement to obtain a Title V permit because they are subject to section 112 standards. See section 502(a) of the CAA and 40 CFR 70.3(b)(2) and 71.3(b)(2).

On this same page in the final rule preamble, we further explain that, in accordance with 40 CFR 70.3(c) and 70.5(c)(3), a Title V permit application needs to include emissions information relative to all regulated air pollutants that are emitted from the subject units, not just the specific HAP pollutants regulated by the MACT standards. However, we then say, "Although, the permit itself would contain standards only for the HAP subject to MACT standards (the section 112(c)(6) HAP)." Initially this phrase was part of a longer sentence in a draft version of the preamble and was inadvertently incorporated into the final preamble. While the intent of the sentence was to note that a source cannot be required to control more HAP than is regulated by the relevant MACT standards, this sentence is not needed given that Title V permits cannot modify applicable requirements to address additional HAP. Moreover, this phrase is confusing given that all applicable requirements that apply to the subject area source units, not just the relevant MACT standard requirements, are required to be included in the permits for these units. Lastly, this phrase is confusing because it was included at a point in the discussion where permit applications, not permits, were being discussed.

Therefore, in this action, we reiterate that a Title V permit application needs to include emissions information relative to all regulated air pollutants that are emitted from the units subject to the MACT standards, not just the specific HAP pollutants regulated by the MACT standards. Additionally, all MACT standards that apply to the subject units (e.g., subpart EEE for hazardous waste burning boilers and subpart DDDDD for non-hazardous waste burning boilers, etc.), as well as all other applicable requirements that apply to these subject units, e.g., State Implementation Plan requirements, are required to be included in the Title V permits for Phase 2 area sources.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Pursuant to the terms of Executive Order 12866, it has been determined that today's proposed rule constitutes a "significant regulatory action" because this action raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

This proposed rule is not considered to be an economically significant action because the total social costs for this proposed rule are significantly below the $100 million threshold established for economically significant actions.

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.* because there is no additional burden on the industry as a result of the proposed rule, and the ICR has not been revised.

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

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

C. Regulatory Flexibility Act

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

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

owned and operated and is not dominant in the field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that none of the small entities will experience a significant economic impact because the notice imposes no additional regulatory requirements on owners or operators of affected sources. 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 of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's notice of reconsideration does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or to the private sector in any one year. Although our best estimate of total social costs of the final rule was $22.6 million per year, today's notice does not add new requirements that would increase this cost. See 70 FR at 59532. Thus, today's proposed rule is not subject to sections 202 and 205 of the UMRA. EPA has also determined that the notice of reconsideration contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Thus, today's proposed rule is not subject to the requirements of section 203.

E. Executive Order 13132: Federalism

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

Today's proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule, as proposed, is not projected to result in economic impacts to privately owned hazardous waste combustion facilities. Marginal administrative burden impacts may occur at selected States and/or EPA regional offices if these entities experience increased administrative needs or information requests. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This notice of reconsideration does not have tribal implications, as specified in Executive Order 13175. No affected facilities are owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this notice of reconsideration.

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

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 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.

Today's proposed rule is not subject to E.O. 13045 because it is not economically significant as defined under point one of the Order, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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 Fed Reg 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

As described in the October 2005 final rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities

unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified the following consensus standards that were considered practical alternatives to the specified EPA test methods: (1) American Society for Testing and Materials (ASTM) D6735–01, "Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method," and (2) American Society of Mechanical Engineers (ASME) standard QHO–1–2004, "Standard for the Qualification and Certification of Hazardous Waste Incineration Operators." Today's notice of reconsideration does not propose the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA is not considering the use of any additional voluntary consensus standards for this notice.

List of Subjects

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 264

Environmental protection, Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: August 24, 2006.

Stephen L. Johnson,

Administrator.

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

PART 63—NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

2. Section 63.1203 is amended by adding paragraph (e) to read as follows:

§ 63.1203 What are the standards for hazardous waste incinerators that are effective until compliance with the standards under § 63.1219?

* * * * *

(e) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1219 by placing a Documentation of Compliance in the operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1219 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1219 pursuant to § 63.1206 and any extensions granted thereunder.

3. Section 63.1204 is amended by adding paragraph (i) to read as follows:

§ 63.1204 What are the standards for hazardous waste burning cement kilns that are effective until compliance with the standards under § 63.1220?

* * * * *

(i) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1220 by placing a Documentation of Compliance in the operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1220 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1220 pursuant to § 63.1206 and any extensions granted thereunder.

4. Section 63.1205 is amended by adding paragraph (e) to read as follows:

§ 63.1205 What are the standards for hazardous waste burning lightweight aggregate kilns that are effective until compliance with the standards under § 63.1221?

* * * * *

(e) The provisions of this section no longer apply after any of the following dates, whichever occurs first:

(1) The date that your source begins to comply with § 63.1221 by placing a Documentation of Compliance in the operating record pursuant to § 63.1211(c);

(2) The date that your source begins to comply with § 63.1221 by submitting a Notification of Compliance pursuant to § 63.1210(b); or

(3) The date for your source to comply with § 63.1221 pursuant to § 63.1206 and any extensions granted thereunder.

5. Section 63.1206 is amended as follows:

a. By revising paragraph (a)(2) paragraph heading and the first sentence of paragraph (a)(2)(ii)(A).

b. By revising paragraphs (b)(14)(iv) and (b)(16) introductory text.

c. By revising paragraph (c)(9) introductory text.

§ 63.1206 When and how must you comply with the standards and operating requirements?

(a) * * *

(2) *Compliance date for solid fuel boilers, liquid fuel boilers, and hydrochloric acid production furnaces that burn hazardous waste for standards under §§ 63.1216, 63.1217, and 63.1218.* * * *

* * * * *

(ii) * * * (A) If you commenced construction or reconstruction of your hazardous waste combustor after April 20, 2004, you must comply with the new source emission standards of this subpart by the later of October 12, 2005, or the date the source starts operations, except as provided by paragraph (a)(2)(ii)(B) of this section. * * *

* * * * *

(b) * * *

(14) * * *

(iv) *Operating limits.* Semivolatile and low volatile metal operating parameter limits must be established to ensure compliance with the alternative emission limitations described in paragraphs (b)(14)(ii) and (iii) of this section pursuant to § 63.1209(n), except that semivolatile metal feedrate limits apply to lead, cadmium, and selenium, combined, and low volatile metal feedrate limits apply to arsenic, beryllium, chromium, antimony, cobalt, manganese, and nickel, combined.

* * * * *

(16) Compliance with subcategory standards for liquid fuel boilers. You must comply with the mercury, semivolatile metals, low volatile metals, and hydrogen chloride and chlorine gas standards for liquid fuel boilers under § 63.1217 as follows:

(c) * * *

(9) *Particulate matter detection system requirements.* If your combustor is equipped with an electrostatic precipitator or ionizing wet scrubber and you elect not to establish under § 63.1209(m)(1)(iv) site-specific control

device operating parameter limits that are linked to the automatic waste feed cutoff system under paragraph (c)(3) of this section, or your combustor is equipped with a fabric filter and you elect to use a particulate matter detection system pursuant to paragraph (c)(8)(i)(B) of this section, you must continuously operate a particulate matter detection system that meets the specifications and requirements of paragraph (c)(9)(i) through (iii) of this section and you must comply with the corrective measures and notification requirements of paragraphs (c)(9)(iv) through (v) of this section.

* * * * *

6. Section 63.1207 is amended as follows:

a. By adding paragraph (b)(3)(vi).

b. By revising paragraphs (d)(1), (d)(2), and (d)(4).

c. By revising the first sentence of paragraphs (g)(2)(i) and (g)(2)(ii).

d. By revising paragraph (m).

§ 63.1207 What are the performance testing requirements?

* * * * *

(b) * * *

(3) * * *

(vi) Sources that are required to perform the one-time dioxin/furan test pursuant to paragraph (b)(3) of this section are not required to perform confirmatory performance tests.

* * * * *

(d) * * *

(1) *Comprehensive performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence testing no later than 61 months after the date of commencing the previous comprehensive performance test used to show compliance with §§ 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, or 63.1221. If you submit data in lieu of the initial performance test, you must commence the subsequent comprehensive performance test within 61 months of commencing the test used to provide the data in lieu of the initial performance test.

(2) *Confirmatory performance testing.* Except as otherwise specified in paragraph (d)(4) of this section, you must commence confirmatory performance testing no later than 31 months after the date of commencing the previous comprehensive performance test used to show compliance with §§ 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, or 63.1221. If you submit data in lieu of the initial performance test, you must commence the initial confirmatory performance test within 31 months of the date six months after the compliance date. To ensure that the confirmatory test is conducted approximately midway between comprehensive performance tests, the Administrator will not approve a test plan that schedules testing within 18 months of commencing the previous comprehensive performance test.

* * * * *

(4) *Applicable testing requirements under the interim standards. (i) Waiver of periodic comprehensive performance tests.* Except as provided by paragraph (c)(2) of this section, you must conduct only an initial comprehensive performance test under the interim standards (i.e., the standards published in the **Federal Register** on February 13, 2002); all subsequent comprehensive performance testing requirements are waived under the interim standards. The provisions in the introductory text to paragraph (d) and in paragraph (d)(1) of this section apply only to tests used to demonstrate compliance with the permanent replacement standards promulgated on or after October 12, 2005.

(ii) *Waiver of confirmatory performance tests.* You are not required to conduct a confirmatory test under the interim standards (i.e., the standards published in the **Federal Register** on February 13, 2002). The confirmatory testing requirements in the introductory text to paragraph (d) and in paragraph (d)(2) of this section apply only after you have demonstrated compliance with the permanent replacement standards promulgated on or after October 12, 2005.

* * * * *

(g) * * *

(2) * * *

(i) Carbon monoxide (or hydrocarbon) CEMS emissions levels must be within the range of the average value to the maximum value allowed, except as provided by paragraph (g)(2)(v) of this section. * * *

(ii) Each operating limit (specified in § 63.1209) established to maintain compliance with the dioxin/furan emission standard must be held within the range of the average value over the previous 12 months and the maximum or minimum, as appropriate, that is allowed, except as provided by paragraph (g)(2)(v) of this section. * * *

* * * * *

(m) *Waiver of performance test.* You are not required to conduct performance tests to document compliance with the mercury, semivolatile metals, low volatile metals, or hydrogen chloride/chlorine gas emission standards under the conditions specified in paragraphs (m)(1) or (m)(2) of this section. The waiver provisions of this paragraph apply in addition to the provisions of § 63.7(h).

(1) *Emission standards based on exhaust gas flow rate.* (i) You are deemed to be in compliance with an emission standard based on the volumetric flow rate of exhaust gas (i.e. µg/dscm or ppmv) if the twelve-hour rolling average maximum theoretical emission concentration (MTEC) determined as specified below does not exceed the emission standard:

(A) Determine the feedrate of mercury, semivolatile metals, low volatile metals, or total chlorine and chloride from all feedstreams;

(B) Determine the stack gas flowrate; and

(C) Calculate a MTEC for each standard assuming all mercury, semivolatile metals, low volatile metals, or total chlorine (organic and inorganic) from all feedstreams is emitted;

(ii) To document compliance with this provision, you must:

(A) Monitor and record the feedrate of mercury, semivolatile metals, low volatile metals, and total chlorine and chloride from all feedstreams according to § 63.1209(c);

(B) Monitor with a CMS and record in the operating record the gas flowrate (either directly or by monitoring a surrogate parameter that you have correlated to gas flowrate);

(C) Continuously calculate and record in the operating record the MTEC under the procedures of paragraph (m)(1)(i) of this section; and

(D) Interlock the MTEC calculated in paragraph (m)(1)(i)(C) of this section to the AWFCO system to stop hazardous waste burning when the MTEC exceeds the emission standard.

(iii) In lieu of the requirement in paragraphs (m)(1)(ii)(C) and (D) of this section, you may:

(A) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride from all feedstreams that ensures the MTEC as calculated in paragraph (m)(1)(i)(C) of this section is below the applicable emission standard; and

(B) Interlock the minimum gas flowrate limit and maximum feedrate limit of paragraph (m)(1)(iii)(A) of this section to the AWFCO system to stop hazardous waste burning when the gas flowrate or mercury, semivolatile metals, low volatile metals, and/or total chlorine and chloride feedrate exceeds the limits of paragraph (m)(1)(iii)(A) of this section.

(2) *Emission standards based on hazardous waste thermal concentration.*

(i) You are deemed to be in compliance with an emission standard specified on a hazardous waste thermal concentration basis (i.e., pounds emitted per million Btu of heat input) if the HAP thermal concentration in the waste feed does not exceed the allowable HAP thermal concentration emission rate.

(ii) To document compliance with this provision, you must:

(A) Monitor and record the feedrate of mercury, semivolatile metals, low volatile metals, and total chlorine and chloride from all hazardous waste feedstreams in accordance with § 63.1209(c);

(B) Determine and record the higher heating value of each hazardous waste feed;

(C) Continuously calculate and record the thermal feed rate of all hazardous waste feedstreams by summing the products of each hazardous waste feed rate multiplied by the higher heating value of that hazardous waste;

(D) Continuously calculate and record the total HAP thermal feed concentration for each constituent by dividing the HAP feedrate determined in paragraph (m)(2)(ii)(A) of this section by the thermal feed rate determined in paragraph (m)(2)(ii)(C) of this section for all hazardous waste feedstreams;

(E) Interlock the HAP thermal feed concentration for each constituent with the AWFCO to stop hazardous waste feed when the thermal feed concentration exceeds the applicable thermal emission standard.

(3) When you determine the feedrate of mercury, semivolatile metals, low volatile metals, or total chlorine and chloride for purposes of this provision, except as provided by paragraph (m)(4) of this section, you must assume that the analyte is present at the full detection limit when the feedstream analysis determines that the analyte is not detected is the feedstream.

(4) Owners and operators of hazardous waste burning cement kilns and lightweight aggregate kilns may assume that mercury is present in raw material at half the detection limit when the raw material feedstream analysis determines that mercury is not detected.

(5) You must state in the site-specific test plan that you submit for review and approval under paragraph (e) of this section that you intend to comply with the provisions of this paragraph. You must include in the test plan documentation that any surrogate that is proposed for gas flowrate adequately correlates with the gas flowrate.

7. Section 63.1209 is amended as follows:

a. By revising paragraphs (l)(1)(iii)(B), (l)(1)(iii)(C) introductory text, (l)(1)(iii)(D)(*1*), and (l)(1)(iii)(D)(*2*).

b. By revising paragraphs (n)(2)(iii)(A), (n)(2)(v)(A)(*2*)(*iv*), (n)(2)(v)(B)(*1*)(*i*), (n)(2)(v)(B)(*1*)(*ii*), (n)(2)(v)(B)(*2*), and the first sentence of paragraph (n)(2)(vii) introductory text.

c. By revising paragraph (o)(1)(ii)(A)(*3*).

§ 63.1209 What are the monitoring requirements?

* * * * *

(l) * * *

(1) * * *

(iii) * * *

(B) When complying with the emission standards under §§ 63.1204 and 63.1220(a)(2)(ii)(A) and (b)(2)(ii)(A), you must establish a 12-hour rolling average limit for the feedrate of mercury in all feedstreams as the average of the test run averages;

(C) Except as provided by paragraph (l)(1)(iii)(D) of this section, when complying with the hazardous waste maximum theoretical emission concentration (MTEC) under § 63.1220(a)(2)(ii)(B) and (b)(2)(ii)(B), you must:

* * * * *

(D) * * *

(*1*) Identify in the Notification of Compliance a minimum gas flowrate limit and a maximum feedrate limit of mercury from all hazardous waste feedstreams that ensures the MTEC calculated in paragraph (l)(1)(iii)(C)(*4*) of this section is below the operating requirement under paragraphs §§ 63.1220(a)(2)(ii)(B) and (b)(2)(ii)(B); and

(*2*) Initiate an automatic waste feed cutoff that immediately and automatically cuts off the hazardous waste feed when either the gas flowrate or mercury feedrate exceeds the limits identified in paragraph (l)(1)(iii)(D)(*1*) of this section.

* * * * *

(n) * * *

(2) * * *

(iii) * * * (A) When complying with the emission standards under § 63.1220(a)(3)(i), (a)(4)(i), (b)(3)(i), and (b)(4)(i), you must establish 12-hour rolling average feedrate limits for semivolatile and low volatile metals as the thermal concentration of semivolatile metals or low volatile metals in all hazardous waste feedstreams. You must calculate hazardous waste thermal concentrations for semivolatile metals and low volatile metals for each run as the total mass feedrate of semivolatile metals or low volatile metals for all hazardous waste feedstreams divided by the total heat input rate for all hazardous waste feedstreams. The 12-hour rolling average feedrate limits for semivolatile metals and low volatile metals are the average of the test run averages, calculated on a thermal concentration basis, for all hazardous waste feeds.

* * * * *

(v) * * *

(A) * * *

(*2*) * * *

(*iv*) If you select an averaging period for the feedrate limit that is greater than a 12-hour rolling average, you must calculate the initial rolling average as though you had selected a 12-hour rolling average, as provided by paragraph (b)(5)(i) of this section. Thereafter, you must calculate rolling averages using either one-minute or one-hour updates. Hourly updates shall be calculated using the average of the one-minute average data for the preceding hour. For the period beginning with initial operation under this standard until the source has operated for the full averaging period that you select, the average feedrate shall be based only on actual operation under this standard.

* * * * *

(B) * * *

(*1*) * * *

(*i*) The 12-hour rolling average feedrate limit is a hazardous waste thermal concentration limit expressed as pounds of chromium in all hazardous waste feedstreams per million Btu of hazardous waste fed to the boiler. You must establish the 12-hour rolling average feedrate limit as the average of the test run averages.

(ii) You must comply with the hazardous waste chromium thermal concentration limit by determining the feedrate of chromium in all hazardous waste feedstreams (lb/hr) and the hazardous waste thermal feedrate (MMBtu/hr) at least once each minute as [hazardous waste chromium feedrate (lb/hr)/hazardous waste thermal feedrate (MMBtu/hr)].

(*2*) *Boilers that feed hazardous waste with a heating value less than 10,000 Btu/lb.* You must establish a 12-hour rolling average limit for the total feedrate (lb/hr) of chromium in all feedstreams as the average of the test run averages.

* * * * *

(vii) *Extrapolation of feedrate levels.* In lieu of establishing feedrate limits as specified in paragraphs (n)(2)(ii) through (vi) of this section, you may request as part of the performance test plan under §§ 63.7(b) and (c) and §§ 63.1207(e) and (f) to use the semivolatile metal and low volatile metal feedrates and associated emission

rates during the comprehensive performance test to extrapolate to higher allowable feedrate limits and emission rates. * * *

* * * * *

(o) * * *

(1) * * *

(ii) * * *

(A) * * *

(*3*) You must comply with the feedrate limit by determining the mass feedrate of hazardous waste feedstreams (lb/hr) at least once a minute and by knowing the chlorine content (organic and inorganic, lb of chlorine/lb of hazardous waste) and heating value (Btu/lb) of hazardous waste feedstreams at all times to calculate a 1-minute average feedrate measurement as [hazardous waste chlorine content (lb of chlorine/lb of hazardous waste feed)/ hazardous waste heating value (Btu/lb of hazardous waste)]. You must update the rolling average feedrate each hour with this 60-minute average feedrate measurement.

* * * * *

8. Section 63.1210 is amended by revising paragraphs (b) introductory text, (b)(3), and (c)(1) to read as follows:

§ 63.1210 What are the notification requirements?

* * * * *

(b) *Notification of intent to comply (NIC).* These procedures apply to sources that have not previously complied with the requirements of paragraphs (b) and (c) of this section, and to sources that previously complied with the NIC requirements of §§ 63.1210 and 63.1212(a), which were in effect prior to October 11, 2000, that must make a technology change requiring a Class 1 permit modification to meet the standards of §§ 63.1219, 63.1220, and 63.1221.

* * * * *

(3) You must submit the final NIC to the Administrator no later than one year following the effective date of the emission standards of this subpart or 60 days following the informal public meeting.

(c) * * * (1) Prior to the submission of the NIC to the permitting agency, and no later than 10 months after the effective date of the emission standards of this subpart or 30 days following notice of the informal public meeting, you must hold at least one informal meeting with the public to discuss the anticipated activities described in the draft NIC for achieving compliance with the emission standards of this subpart. You must post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

* * * * *

9. Section 63.1212 is amended by revising paragraphs (b)(1), (b)(3), and (b)(4) to read as follows:

§ 63.1212 What are the other requirements pertaining to the NIC?

* * * * *

(b) * * *

(1) Prepare a draft NIC pursuant to § 63.1210(b) and make it available to the public upon issuance of the notice of public meeting pursuant to § 63.1210(c)(3);

* * * * *

(3) Provide notice to the public of a pre-application meeting pursuant to § 124.30 of this chapter or notice to the public of a permit modification request pursuant to § 270.42 of this chapter; and

(4) Hold an informal public meeting, pursuant to §§ 63.1210(c)(1) and (c)(2), 30 days following notice of the NIC public meeting and notice of the pre-application meeting or notice of the permit modification request to discuss anticipated activities described in the draft NIC and pre-application or permit modification request for achieving compliance with the emission standards of this subpart.

* * * * *

10. Section 63.1215 is amended as follows:

a. By revising paragraph (a)(1)(i).

b. By revising the definitions of "1-Hour Average HCl-Equivalent Emission Rate" and "1-Hour Average HCl-Equivalent Emission Rate Limit" in paragraph (a)(2).

c. By revising paragraphs (b)(2), (b)(3), and (b)(6)(ii)(C).

d. By revising paragraphs (e)(2)(i)(B), (e)(2)(i)(C), and (e)(2)(i)(D).

e. By adding paragraph (e)(3).

f. By revising paragraph (f)(5)(ii)(A).

g. By revising paragraph (h)(2)(i).

§ 63.1215 What are health-based compliance alternatives for total chlorine?

(a) * * *

(1)

(i) Identify a total chlorine emission concentration (ppmv) expressed as chloride (Cl(-)) equivalent for each on-site hazardous waste combustor. You may select total chlorine emission concentrations as you choose to demonstrate eligibility for the risk-based limits under this section, except as provided by paragraph (b)(7) of this section;

* * * * *

(2) * * *

1-Hour Average HCl-Equivalent Emission Rate means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using aRELs as the health risk metric for acute exposure.

1-Hour Average HCl-Equivalent Emission Rate Limit means the HCl-equivalent emission rate (lb/hr) determined by equating the toxicity of chlorine to HCl using aRELs as the health risk metric for acute exposure and which ensures that maximum 1-hour average ambient concentrations of HCl-equivalents do not exceed a Hazard Index of 1.0, rounded to the nearest tenths decimal place (0.1), at an off-site receptor location.

* * * * *

(b) * * *

(2) *Annual average rates.* You must calculate annual average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

$$ER_{LTtw} = ER_{HCl} + ER_{Cl2} \times (RfC_{HCl}/RfC_{Cl2})$$

Where:

ER_{LTtw} is the annual average HCl toxicity-weighted emission rate (HCl-equivalent emission rate) considering long-term exposures, lb/hr

ER_{HCl} is the emission rate of HCl in lbs/hr

ER_{Cl2} is the emission rate of chlorine in lbs/hr

RfC_{HCl} is the reference concentration of HCl

RfC_{Cl2} is the reference concentration of chlorine

(3) *1-hour average rates.* You must calculate 1-hour average toxicity-weighted HCl-equivalent emission rates for each combustor as follows:

$$ER_{STtw} = ER_{HCl} + ER_{Cl2} \times (aREL_{HCl}/aREL_{Cl2})$$

Where:

ER_{STtw} is the 1-hour average HCl-toxicity-weighted emission rate (HCl-equivalent emission rate) considering 1-hour (short-term) exposures, lb/hr

ER_{HCl} is the emission rate of HCl in lbs/hr

ER_{Cl2} is the emission rate of chlorine in lbs/hr

$aREL_{HCl}$ is the aREL for HCl

$aREL_{Cl2}$ is the aREL for chlorine

* * * * *

(6) * * *

(ii) * * *

(C) You must calculate the 1-hour average HCl-equivalent emission rate using these HCl and Cl_2 emission rates and the equation in paragraph (b)(3) of this section.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(B) Your permitting authority should notify you of approval or intent to disapprove your eligibility demonstration within 6 months after receipt of the original demonstration, and within 3 months after receipt of any supplemental information that you submit. A notice of intent to disapprove your eligibility demonstration, whether before or after the compliance date, will identify incomplete or inaccurate information or noncompliance with prescribed procedures and specify how much time you will have to submit additional information or to achieve the MACT standards for total chlorine under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. If your eligibility demonstration is disapproved, the permitting authority may extend the compliance date of the total chlorine standards up to one year to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT total chlorine standards.

(C) If your permitting authority has not approved your eligibility demonstration by the compliance date, and has not issued a notice of intent to disapprove your demonstration, you may begin complying, on the compliance date, with the HCl-equivalent emission rate limits you present in your eligibility demonstration provided that you have made a good faith effort to provide complete and accurate information and to respond to any requests for additional information in a timely manner. If the permitting authority believes that you have not made a good faith effort to provide complete and accurate information or to respond to any requests for additional information, however, the authority may notify you in writing by the compliance date that you have not met the conditions for complying with the health-based compliance alternative without prior approval. Such notice will explain the basis for concluding that you have not made a good faith effort to comply with the health-based compliance alternative by the compliance date.

(D) If your permitting authority issues a notice of intent to disapprove your eligibility demonstration after the compliance date, the authority will identify the basis for that notice and specify how much time you will have to submit additional information or to comply with the MACT standards for total chlorine under §§ 63.1216, 63.1217, 63.1219, 63.1220, and 63.1221. The permitting authority may extend the compliance date of the total chlorine standards up to one-year to allow you to make changes to the design or operation of the combustor or related systems as quickly as practicable to enable you to achieve compliance with the MACT standards for total chlorine.

* * * * *

(3) The operating requirements in the eligibility demonstration are applicable requirements for purposes of parts 70 and 71 of this chapter and will be incorporated in the title V permit.

(f) * * *

(5) * * *

(ii) * * *

(A) You must determine your chlorine emissions to be the higher of the value measured by Method 26/26A, or an equivalent method, or the value calculated by the difference between the combined hydrogen chloride and chlorine levels measured by Method 26/26A, or an equivalent method, and the hydrogen chloride measurement from EPA Method 320/321 or ASTM D 6735–01, or an equivalent method.

* * * * *

(h) * * *

(2) * * *

(i) *Proactive review.* You must submit for review and approval with each comprehensive performance test plan either a certification that the information used in your eligibility demonstration has not changed in a manner that would decrease the annual average or 1-hour average HCl-equivalent emission rate limit, or a revised eligibility demonstration.

* * * * *

11. Section 63.1216 is amended by revising paragraph (a)(7) to read as follows:

§ 63.1216 What are the standards for solid fuel boilers that burn hazardous waste?

(a) * * *

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 69 mg/dscm corrected to 7 percent oxygen.

* * * * *

12. Section 63.1217 is amended by revising paragraphs (a)(6)(ii), (a)(7), and (b)(6)(ii) to read as follows:

§ 63.1217 What are the standards for liquid fuel boilers that burn hazardous waste?

(a) * * *

(6) * * *

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 5.1×10^{-2} lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

(7) For particulate matter, except for an area source as defined under § 63.2 or as provided by paragraph (e) of this section, emissions in excess of 79 mg/dscm corrected to 7 percent oxygen.

* * * * *

(b) * * *

(6) * * *

(ii) When you burn hazardous waste with an as-fired heating value of 10,000 Btu/lb or greater, emissions in excess of 5.1×10^{-2} lbs combined emissions of hydrogen chloride and chlorine gas attributable to the hazardous waste per million Btu heat input from the hazardous waste;

* * * * *

13. Section 63.1219 is amended by revising paragraphs (a)(7) and (b)(7) to read as follows:

§ 63.1219 What are the replacement standards for hazardous waste incinerators?

(a) * * *

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 30 mg/dscm corrected to 7 percent oxygen.

(b) * * *

(7) Except as provided by paragraph (e) of this section, particulate matter in excess of 3.5 mg/dscm corrected to 7 percent oxygen.

* * * * *

14. Section 63.1220 is amended as follows:

a. By revising paragraphs (a)(2)(ii) and (a)(7)(i).

b. By revising paragraphs (b)(2)(ii) and (b)(7)(i).

§ 63.1220 What are the replacement standards for hazardous waste burning cement kilns?

(a) * * *

(2) * * *

(ii) Either:

(A) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen, or

(B) A hazardous waste feed maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

* * * * *

(7) * * *

(i) Emissions in excess of 65 mg/dscm corrected to 7 percent oxygen; and

* * * * *

(b) * * *

(2) * * *

(ii) Either:

(A) Emissions in excess of 120 µg/dscm, corrected to 7 percent oxygen, or

(B) A hazardous waste feed maximum theoretical emission concentration (MTEC) in excess of 120 µg/dscm;

* * * * *

(7) * * *

(i) Emissions in excess of 5.3 mg/dscm corrected to 7 percent oxygen; and

* * * * *

15. Section 63.1221 is amended by revising paragraphs (a)(7) and (b)(7) to read as follows:

§ 63.1221 What are the replacement standards for hazardous waste burning lightweight aggregate kilns?

(a) * * *

(7) Particulate matter emissions in excess of 57 mg/dscm corrected to 7 percent oxygen.

(b) * * *

(7) Particulate matter emissions in excess of 22 mg/dscm corrected to 7 percent oxygen.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

16. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

17. Section 264.340 is amended as follows:

a. By revising the first sentence of paragraph (b)(1) and paragraph (b)(3).

b. By removing paragraph (b)(5).

§ 264.340 Applicability.

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(b) * * * (1) Except as provided by paragraphs (b)(2) through (b)(4) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of part 63, subpart EEE, of this chapter by conducting a comprehensive performance test and submitting to the Administrator a Notification of Compliance under §§ 63.1207(j) and 63.1210(d) of this chapter documenting compliance with the requirements of part 63, subpart EEE, of this chapter.

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(3) The particulate matter standard of § 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard under §§ 63.1206(b)(14) and 63.1219(e) of this chapter.

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PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

18. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

19. Section 266.100 is amended by redesignating the second paragraph (b)(3)(ii) as (b)(3)(iii).

§ 266.100 [Amended]

[FR Doc. 06–7251 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
September 6, 2006

Part III

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Air Quality Implementation Plans; Texas; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2004–TX–0014; FRL–8216–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Rules for the Control of Highly Reactive Volatile Organic Compounds in the Houston/Galveston/Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving rules adopted by the Texas Commission on Environmental Quality (TCEQ) for the control of highly reactive Volatile Organic Compounds (HRVOCs) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area. These rules for the control of HRVOCs supplement Texas' existing rules for controlling volatile organic compounds (VOC) by providing more extensive requirements for certain equipment in HRVOC service. These additional controls of HRVOC emissions will help to attain and maintain the national ambient air quality standards (NAAQS) for ozone in HGB.

DATES: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2004–TX–0014. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7242; fax number 214–665–7263; e-mail address *young.carl@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used, we mean the EPA.

What Action is EPA Taking?

We are approving portions of revisions to the SIP submitted by the State of Texas in letters dated January 23, 2003, November 7, 2003, March 26, 2004 and December 17, 2004. We are approving the portions of these revisions that pertain to the control of HRVOCs. These rules, which are codified at 30 TAC Chapter 115, Subchapter H, apply to facilities in the HGB ozone nonattainment area. We are also approving the associated revisions to the definitions section of 30 Texas Administrative Code (TAC) 115.10. The revisions are approved pursuant to section 110 and part D of the Federal Clean Air Act (the Act).

What is the Background for this Action?

These rules to control HRVOCs were adopted by TCEQ based on recent findings that certain highly reactive chemicals (ethylene, propylene, 1,3 butadiene and butenes) contribute disproportionately to the ozone problem in the HGB area. EPA issued a proposed approval of these rule revisions on April 7, 2005 (70 FR 17640). In EPA's proposed approval, we explained the rationale for our approval and solicited comments for 30 days.

What Comments Were Received on the Proposed Approval?

Only one comment letter was received regarding the proposed approval and it was supportive of the proposed action.

What does Federal approval of a State regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the federally approved SIP is primarily a state function. However, once the regulation is federally approved, the EPA and the public may take enforcement action against violators of these regulations if the state fails to do so. In addition, only regulations that have been federally approved can be credited toward an area's attainment or rate of progress plan. EPA has proposed approval of the ozone attainment plan for the HGB area. The measures to control HRVOCs in this approval are part of the control strategy to demonstrate attainment of the ozone standard.

What General Requirements do the Rules Establish?

The rules establish improved monitoring requirements for flares, cooling towers, process vents and pressure relief valves. The rules establish a 1200 lb/hour site-wide short-term limit on HRVOCs for sources in Harris County. In addition, the improved source monitoring provides the information necessary for sources to demonstrate compliance with an annual cap and trade program controlling emissions of HRVOCs from cooling tower, process vents, pressure relief devices and flares contained in 30 TAC Chapter 101. EPA proposed approval of the HRVOC cap and trade program on October 5, 2005 (70 FR 58112). Also, to better control fugitive emissions of HRVOCs, the rules being approved here establish more stringent leak detection and repair work practice requirements.

Why are We Approving these Rules?

The addition of these rules for the control of HRVOCs will supplement Texas' existing rules controlling volatile organic compounds (VOC) and provide improvements to the Texas SIP's VOC Reasonably Available Control Technology (RACT) rules. These additional controls of HRVOC emissions will help to attain and maintain the national ambient air quality standards (NAAQS) for ozone in HGB. Today's actions makes the revised regulations federally enforceable.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional

requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. 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 November 6, 2006. 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 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 115 (Reg 5), immediately following the entry for Section 115.629, by adding a new centered heading "Subchapter H—Highly-Reactive Volatile Organic Compounds", followed by new entries for Sections 115.720 to 115.789 to read as follows.

§ 52.2270 Identification of plan.

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(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* * * * * * *				
Chapter 115 (Reg 5)—Control of Air Pollution From Volatile Organic Compounds				
* * * * * * *				
Section 115.629	Affected Counties and Compliance Schedules.	10/27/04	02/10/05, 70 *FR* 7043.	
Subchapter H—Highly-Reactive Volatile Organic Compounds Division 1: Vent Gas Control				
Section 115.720	Applicability and Definitions	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 115.722	Site-wide Cap and Control Requirements.	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.725	Monitoring and Testing Requirements	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.726	Recordkeeping and Reporting Requirements.	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.727	Exemptions	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.729	Counties and Compliance Schedules	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Division 2: Cooling Tower Heat Exchange Systems				
Section 115.760	Applicability and Cooling Tower Heat Exchange System Definitions.	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.761	Site-wide Cap	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.764	Monitoring and Testing Requirements	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.766	Recordkeeping and Reporting Requirements.	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.767	Exemptions	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.769	Counties and Compliance Schedules	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Division 3: Fugitive Emissions				
Section 115.780	Applicability	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.781	General Monitoring and Inspection Requirements.	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.782	Procedures and Schedule for Leak Repair and Follow-up.	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.783	Equipment Standards	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.786	Recordkeeping Requirements	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.787	Exemptions	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.788	Audit Provisions	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	
Section 115.789	Counties and Compliance Schedules	12/01/2004	9/06/2006 [Insert *FR* citation from published date].	

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[FR Doc. 06–7409 Filed 9–5–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0033; FRL–8216–6]

Approval and Promulgation of State Implementation Plans; Texas; Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the Houston/Galveston/Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas State Implementation Plan concerning the Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the Houston/Galveston/Brazoria ozone nonattainment area.

DATES: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0033. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15-cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, Air Permitting Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone 214–665–2115, *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean EPA.

Outline

I. What action is EPA taking?

EPA is approving the Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) Economic Incentive Program (EIP), published at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H Emissions Banking and Trading, Division 6, sections 101.390–101.394, 101.396, 101.399–101.401, and 101.403. These revisions were adopted by the Texas Commission on Environmental Quality (TCEQ) on December 01, 2004, and submitted to EPA on December 17, 2004, as a revision to the State Implementation Plan (SIP). As discussed in our proposed action at 70 FR 58144, we conclude that the HECT program is consistent with section 110(l) of the Clean Air Act. We proposed approval of the HECT program as an element of the Texas SIP for the Houston/Galveston/Brazoria (HGB) ozone nonattainment area on October 5, 2005 (70 FR 58138).

II. What is the background for this action?

The HECT program was adopted as a state regulation on December 1, 2004. The TCEQ developed the program as part of its mid-course review of the 1-hour ozone attainment plan for the HGB ozone nonattainment area. The mid-course review showed that ozone reductions comparable to those achieved by the 90 percent reduction in industrial nitrogen oxide (NO_X) emissions and the enforceable commitments for an additional 42 tons per day of NO_X reductions required in the November 2001 (66 FR 57160) approved SIP could be achieved through a combination of 80 percent reduction in industrial NO_X emissions and additional targeted control of certain highly-reactive volatile organic compounds (HRVOCs). TCEQ has chosen to revise its attainment strategy accordingly, decreasing the emphasis on NO_X control and requiring additional reductions of HRVOCs.

In our proposed approval of the HECT program, we stated that final action on the HECT would not occur until we published final approval of the attainment demonstration, which is being processed concurrently with this approval. For a further discussion of the attainment demonstration and EPA's responses to comments on this action, please see our action on the attainment demonstration (EPA–R06–OAR–2005–TX–0018), which is being published elsewhere in today's **Federal Register**.

III. What are EPA's responses to comments received on the proposed action?

EPA's responses to comments submitted by Galveston-Houston Association for Smog Prevention (GHASP), Environmental Defense (Texas Office), the Lone Star Chapter of the Sierra Club, and Public Citizen (Texas Office) on November 4, 2005, are as follows. EPA has summarized the comments below; the complete comments can be found in the administrative record for this action (EPA–R06–OAR–2005–TX–0033). While the comments generally discuss VOC trading programs, we are only addressing comments specific to HRVOCs and the HECT. [1]

Comment 1: The EPA uses the term "less-reactive VOC", but the TCEQ term "other VOC" (OVOC) is preferable. Some of the other VOCs are actually highly reactive on a molar basis, but are not emitted as widely or in as great a quantity as the designated HRVOCs.

Response to Comment 1: We agree that the term "other VOC" (OVOC) will

[1] During the comment period, EPA did not receive comments regarding environmental justice and the HECT program. However, during the finalization process we have reevaluated our interpretation of the definition of Environmental Justice as found in Executive Order 12898. In our proposed approval of the HECT program, we stated that "environmental justice concerns arise when a trading program could result in disproportionate impacts on communities populated by racial minorities, people with low incomes, or Tribes." On further review, we believe the following description is more consistent with E.O. 12898: "Environmental justice concerns can arise when a final rule, such as a trading program, could result in disproportionate burdens on particular communities, including minority or low income communities." This revised language does not alter our determination that the HECT program does not raise environmental justice concerns.

more accurately define VOCs that are not categorized by TCEQ as highly-reactive. We are using the term OVOC instead of "less-reactive VOC" in our final actions on the HGB attainment demonstration and associated rulemakings.

Comment 2: There are problems with the inventory of VOC and HRVOC emissions in the HGB nonattainment area.

Response to Comment 2: While EPA acknowledges that there have been past VOC emission inventory problems from sources associated with the petrochemical industry (see our proposed approval of the revisions to the HGB attainment demonstration, 70 FR 58119), EPA believes that the emission inventory developed by TCEQ for the HGB nonattainment area is an acceptable approach to characterizing the emissions in the HGB nonattainment area. In addition, we are incorporating by reference our responses to comments provided in our approval of the attainment demonstration for the HGB ozone nonattainment area (EPA–R06–OAR–2005–TX–0018). Those responses more specifically address the commenters' concerns regarding the development and use of the imputed inventory, characterization of other VOCs in the inventory, and appropriate emissions monitoring techniques for flares, fugitive emissions, and upsets. Also, as will be discussed more fully in our responses to Comments 3 and 4, the implementation of the HECT and the associated monitoring and reporting requirements will serve to improve the emissions inventory for HRVOCs in the HGB nonattainment area.

Comment 3: The VOC and HRVOC trading programs use unreliable data, which cannot be replicably measured. There are problems with current methods for measurement of HRVOC and VOC emissions; therefore, the VOC and HRVOC trading programs do not meet EPA's EIP Guidance for quantification.

Response to Comment 3: EPA disagrees. The proposed HECT rule, at 70 FR 58138, describes the basis for EPA's conclusion that the HECT rule satisfies the EIP Guidance ("Improving Air Quality with Economic Incentive Programs" EPA–452/R–01–001, January 2001) criteria on quantifiability, which are found in Chapter 4 ("Fundamental Principles of All EIPs").

Emissions and emission reductions attributed to an EIP are quantifiable if they can be reliably and replicably measured: the source must be able to reliably calculate the amount of emissions and emission reductions from the EIP strategy, and must be able to replicate the calculations. Under the HECT program, sources address the element of quantification by using a quantification protocol that has been approved by TCEQ and EPA. Both agencies have important roles in ensuring these protocols provide reliable and replicable emission measurements. The approved quantification protocols for calculating annual HRVOC emissions for compliance with the HECT program are contained in sections 115.725 and 115.764 of 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. Additionally, VOC emission reduction credits (ERCs) that are eligible for conversion into HECT allowances must also be quantified using the monitoring and testing methods required in sections 115.725 and 115.764 and certified under the Emission Credit Banking and Trading program. The monitoring and testing protocols in sections 115.725 and 115.764 all require continuous monitoring systems; EPA considers continuous monitoring systems reliable and replicable (*see* Section 5.3(a) of the EIP Guidance). If the monitoring and testing data required under sections 115.725 and 115.764 are unavailable, sources can calculate HRVOC emissions for HECT compliance during this time period through continuous monitoring data, periodic monitoring data, testing data, data from manufacturers, and engineering calculations. This measurement hierarchy agrees with the emission measurement protocol hierarchy that EPA recommends in the EIP Guidance (*see* Section 5.2(d)).

Comment 4: TCEQ and EPA lack confidence in current methods for measuring emissions. This lack of confidence increases the risks associated with a market-based trading program, until the TCEQ is able to reconcile ambient monitoring with industry emission inventories. For example, trading could exacerbate the challenge of identifying the cause of any program failures because comparisons of ambient monitoring trend data to emission inventory data will require consideration of the timing and magnitude of trades.

Response to Comment 4: EPA disagrees. We have discussed above in response to Comments 2 and 3 our conclusion that the methods used for measuring emissions under the HECT program are consistent with EPA policy and guidance, and that the emissions inventory developed by TCEQ is an acceptable approach to characterizing the emissions in the HGB nonattainment area. Further, to the extent there are concerns related to differences between ambient monitoring data and the HGB industrial emissions inventory, the operation of the HECT will serve to increase rather than decrease the level of certainty. Specifically, the use of approved quantification methods required under the HECT will extend monitoring to vent gas streams, flares, and cooling tower heat exchanges systems that might not have been adequately monitored before. Accordingly, accounting for actual emissions under the HECT—which is required of each source subject to this program—should improve the industrial emissions inventory.

Comment 5: The EPA should find that it is premature for TCEQ to allow trading of unquantifiable emissions of VOCs in the HGB nonattainment area. If either the source or the recipient incorrectly estimates the emissions involved in a trade, the region is at risk of a net increase in emissions as a result of the trade. Until refineries and chemical plants are able to routinely quantify their VOC emissions, EPA should not allow trading of these VOC emissions.

Response to Comment 5: EPA disagrees that VOC emissions should be ineligible for trading in the HGB nonattainment area. EPA believes that allowing the petrochemical industry to trade VOC emissions under the HECT program is appropriate because the TCEQ has made changes in regulatory requirements to require that certain sources of VOC emissions comply with continuous emissions monitoring requirements by the end of 2006. Additionally, as discussed in the EIP Guidance, we have concluded that cap and trade programs can be effective ways to reduce emissions, especially from large stationary sources. Each trade is part of a system designed to significantly reduce emissions of the pollutants subject to the cap. EPA also believes that allowing the petrochemical industry to trade HRVOC emissions under the HECT program is appropriate notwithstanding the commenter's concern about emissions estimates, because the HECT program satisfies the EIP Guidance criteria for quantification. In the HECT program, sources trading HECT allowances must quantify their emissions using the approved protocols in 30 TAC Chapter 115. The use of approved protocols ensures that sources correctly estimate their excess allowances or the amount of allowances needed to cover actual emissions. Additionally, TCEQ included a five percent safety margin in setting the overall level of annual emissions allowed under the HECT, which should produce a net annual average HRVOC

emissions decrease in the HGB nonattainment area below the level set by the cap.

Comment 6: EPA should not approve the exclusion of emissions above the short-term limit from the annual cap if a trading program is approved.

Response to Comment 6: EPA disagrees. We requested specific comment on this feature of the program because, as noted by us and the commenters, it departs from past practices with cap and trade programs. The commenters made one specific point in this regard, which we address in Comment 7. Our response to the more general comment follows.

A key feature of the HGB attainment strategy is the two-part approach to HRVOC emissions. Routine HRVOC emissions are targeted and reduced through an annual cap-and-trade program, while the non-routine emissions from emission events, maintenance, start-up and shutdown are controlled through a short-term limit of 1200 lb/hour. When exceedances of the short-term limit occur, the hourly emissions above 1200 lb/hr are not counted toward compliance with the annual cap but are still subject to enforcement as a violation of the short-term limit. EPA expects that the root cause of the conditions giving rise to any particular exceedance of the short-term limit will be identified and corrected as expeditiously as practicable. The source is still required to use good air pollution control practices consistent with the applicable NSPS (40 CFR 60.11(d)) and MACT standards or other applicable Federal or State programs.

TCEQ concluded that separating the two control elements was an appropriate means of protecting smaller sources subject to the HECT from depending on market availability of allowances or facing enforcement action if all emissions from an exceptionally large release exhausted their HECT allowances. Additionally, this separation of the annual cap and the short-term limit establishes a clear procedure for handling emissions during non-routine events. We believe the annual cap in conjunction with the short-term limit will achieve the goals of the attainment demonstration as indicated by TCEQ's modeling analysis. Please see our action and TSD on the attainment demonstration (EPA–R06–OAR–2005–TX–0018) for further explanation.

An additional advantage of separating these two control elements is that counting all emissions toward the annual cap could result in a loss of the incentives and cost-effectiveness associated with cap- and trade programs. In EPA's experience with cap and trade programs, some sources will always overcontrol emissions, which they in turn will most likely sell to other sources that cannot achieve such reductions without making greater expenditures. Through the functioning of the cap and trade market, reductions will tend to be made by the sources able to make them in the most cost-effective manner, and therefore the program will tend to promote the achievement of the maximum amount of emission reductions per dollar of resources expended.

In the HGB area, however, an additional important factor is present, in that a significant number of sources have the potential for large emissions events or "spikes." In such circumstances, if a cap and trade program counts all emissions towards the cap, then overcontrolling sources will tend to retain all of their reductions as insurance against the possibility of consuming their entire annual allowance through an unforeseeable emissions event. Therefore, eligible reductions will not be traded as allowances, which will impair the market function of the cap and trade program and thereby weaken its tendency to cost effectively achieve emission reductions. The two-part structure of the Texas program offsets this disadvantage.

Comment 7: EPA's analysis suggests that the HECT program could lead to results that flout the intent of an EIP. An example would be a company that invests in efforts to dramatically reduce its routine HRVOC emissions below its annual cap, but fails to invest in efforts to reduce its risk of a major upset. This company could be the largest single emitter of HRVOCs in a year while also being a major seller of HECT allowances.

Response to Comment 7: EPA disagrees. The proposed HECT rule, at 70 FR 58143, describes EPA's analysis and our determination that, on balance, the HECT program is approvable. The intent of the HECT is to reduce routine emissions of HRVOCs. The scenario presented by the commenters actually supports the design of the HECT, in that the routine HRVOC emissions have been controlled because the company has been able to "dramatically reduce" these emissions below the facility's annual allocation level. The emissions associated with a major upset that are exempted from the annual cap (emissions above 1200 lb/hr) would be violations of the short-term emissions limit and subject to enforcement. We believe that this two-part approach to control of HRVOC emissions recognizes the uniqueness of the HGB nonattainment area and is appropriate to demonstrate attainment. Additional information on our analysis of the attainment demonstration is available in the rulemaking docket for this action (EPA–R06–OAR–2005–TX–0018).

As noted in our proposed approval, the exemption of hourly limit exceedances from the annual cap is not provided for in EPA's EIP Guidance, but the scenario provided by the commenters is unlikely to occur. Based on the final HECT allocation scheme updated March 20, 2006, the largest allocation is 441.9 tons. This allocation is approximately equivalent to 100.9 lb/hr, assuming the facility will operate with the allocation as an hourly average to represent routine emissions. Therefore, the largest HECT allocation will be approximately twelve times smaller than the 1200 lb/hr short-term limit. For every other source under the HECT, the disparity would be even greater. Based on this difference between the short-term limit and presumed routine emissions levels, no source would be able to operate at the hourly limit for an extended period of time without pushing its emissions total close to or above the annual cap—in which case it would not be able to sell allowances. Therefore, as discussed in our proposal, only truly non-routine emissions will exceed the hourly limit. Such exceedances are subject to enforcement as a violation of the 1200 lb/hr limit. Thus, two factors militate against the existence of the commenters' hypothetical high-emitting allowance seller: (1) The improbability of a source operating for long above the hourly limit without consuming a large part of its annual allocation, and (2) the fact that each time it did exceed the hourly limit, it could be subject to enforcement. Because we find that the result cited by the commenters is unlikely to occur, we continue to believe that the relative advantages and disadvantages of the structure of the HECT program support approval.

Also, while the structure of the HECT and the HRVOC rules anticipates that emission events will not be completely eradicated, EPA believes that in combination these programs provide sufficient disincentives that sources will sufficiently reduce the frequency and magnitude of large emission events such that emission events would not be expected to impact peak ozone levels. The University of Texas report "Variable Industrial VOC Emissions and Their Impact on Ozone Formation in the Houston Galveston Area," April 16, 2004, estimated from historic

information that it is probable that at least one event will occur annually at a time and location to impact peak ozone. TCEQ determined, and EPA concurs, that it is therefore necessary to reduce the frequency of emission events so that emission events do not interfere with attainment of the 1-hour NAAQS, which only allows an average of one exceedance per year. Based on this study, we believe the hourly emission limit will achieve this goal. Because facilities would be expected to take action to avoid emission events exceeding the short-term limit of 1200 lbs/hr, we anticipate that the frequency of such events in the future will be lower than in the past and on average less than 1 event per year impacting peak ozone should be expected. The University of Texas study also supports our belief that even if the scenario presented by the commenters does actually occur, it is unlikely to impact attainment of the 1-hour ozone NAAQS.

Comment 8: If EPA approves the exclusion of emissions above the short-term cap from the annual cap, it should at least condition its approval on the TCEQ adopting a requirement that a company may not be a net seller of HECT allowances in the same year that it makes use of the exclusion.

Response to Comment 8: EPA disagrees. The condition described by the commenters is not necessary to ensure that the HECT functions properly. As described in our response to Comment 7 above, it is unlikely that a source would be a net seller of allowances and also exempt emissions above the hourly limit from its annual cap.

Comment 9: If EPA approves the HECT program as adopted by the TCEQ, EPA should commit to independently auditing the program annually during its first several years to determine whether implementation of the rule meets EIP Guidance.

Response to Comment 9: EPA disagrees that an independent audit of the HECT is necessary. As proposed by EPA (70 FR 58138), the HECT does have a formal audit provision that provides sufficient oversight to identify and address potential areas of concern. The audit provision is in section 101.403(a) of the HECT rules and requires TCEQ to conduct an audit every three years, beginning in 2007. The audit will evaluate the impact of the program on the State's ozone attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the TCEQ Executive Director may choose to include. The TCEQ Executive Director will recommend measures to remedy any problems identified during the audit, including discontinuing allowances trading. The audit data and results must be completed and submitted to EPA and made available for public inspection within six months from the beginning of the audit. EPA will receive the audit reports and will have the opportunity through the SIP process to require any necessary changes. Additionally, facilities that do not have enough allowances to cover their actual HRVOC emissions during a control period will have their allowances for the next control period reduced by an amount equal to the emissions exceeding the allowances, plus an additional ten percent of the exceedance. Also, the TCEQ Executive Director has the authority to initiate enforcement actions if necessary to correct violations of the HECT program.

The HECT audit provisions described above are consistent with EPA's expectations for evaluating the results of an economic incentive program (EIP), as outlined in section 5.3(b) of the EIP Guidance. Section 5.3(b) explains that an appropriate schedule for program evaluations is at least every three years, which coincides with other periodic reporting requirements such as those applicable to emission inventory requirements required by the CAA. EPA believes that the triennial HECT audit schedule and the required annual report (section 101.403(b)) that summarizes all HECT trades completed in the most recent control period will be sufficient to ensure the HECT does not jeopardize the HGB area's attainment strategy.

EPA's response to Texas Industry Project (TIP) comments made on November 4, 2005, is as follows:

Comment: TIP supports EPA's proposed approval of the HECT program and urges EPA to finalize its approval as soon as practicable.

Response: EPA acknowledges the support of TIP for our approval of the HECT program.

EPA's response to comments made by the BCCA Appeal Group (BCCAAG) on November 4, 2005, is as follows:

Comment 1: BCCAAG supports EPA's proposed approval of the HECT program and urges EPA to finalize its approval as soon as practicable.

Comment 2: BCCAAG supports the establishment of a separate short-term limit on HRVOC emissions, and the exclusion of short-term limit exceedances from the HECT program.

Response to Comment 1 and 2: EPA acknowledges the support of BCCAAG for our approval of the HECT program and the specific feature of the HECT that allows exceedances of the short-term limit to be exempt from the HECT.

We note that BCCAAG also submitted a set of comments on November 4, 2005, that were specific to our proposed action on the revisions to the HGB attainment demonstration. On page 8 of this submittal, the commenter references the HECT, but gives no additional information relevant to our rulemaking on the HECT. We are addressing this separate BCCAAG submittal in our action on the attainment demonstration (EPA–R06–2005–TX–0018).

IV. What does Federal approval of a State regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the federally approved SIP is primarily a State function. However, once the regulation is federally approved, EPA and the public may take enforcement action against violators of these regulations.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, 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 SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2006. 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 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, by adding in numerical order a new centered heading "Division 6—Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program" followed by new entries for sections 101.390, 101.391, 101.392, 101.393, 101.394, 101.396, 101.399, 101.400, 101.401 and 101.403.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
* *	*	*	*	*
Subchapter H—Emissions Banking and Trading				
* *	*	*	*	*
Division 6—Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program				
Section 101.390	Definitions	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.391	Applicability	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.392	Exemptions	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 101.393	General provisions	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.394	Allocation of allowances	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.396	Allowance deductions	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.399	Allowance Banking and Trading	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.400	Reporting	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.401	Level of activity certification	2/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.403	Program audits and reports	12/01/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	

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[FR Doc. 06–7410 Filed 9–5–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0023; FRL–8216–4]

Approval and Promulgation of State Implementation Plans; Texas; Revisions for the Mass Emissions Cap and Trade Program for the Houston/Galveston/Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas State Implementation Plan (SIP) concerning the Mass Emissions Cap and Trade (MECT) program for emissions of nitrogen oxides (NO_X) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area. Additionally, EPA is approving several subsections of Chapter 116 of the Texas Administrative Code (TAC) (Control of Air Pollution by Permits for New Construction or Modification) that provide cross-references to the MECT program. EPA is approving these revisions in accordance with the requirements of the Federal Clean Air Act (CAA).

DATES: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0023. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15-cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, Air Permitting Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone 214–665–2115, *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean EPA.

Outline

I. What action is EPA taking?

EPA is approving as part of the SIP revisions to the MECT program for NO_X emissions in the HGB ozone nonattainment area (consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) published at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H Emissions Banking and Trading, Division 3. EPA is approving revisions to sections 101.350–101.354, and 101.360 submitted on January 31, 2003, and revisions to sections 101.356 and 101.359, submitted on December 6, 2004. EPA is also approving revisions to 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification that provide cross-references to the MECT program. The revisions to Chapter 116 we are approving are subsections 116.111(a)(2)(L), 116.115(b)(2)(C)(iii), 116.176, 116.610(a)(6), and 116.615(5)(C), which were submitted as a SIP revision on April 12, 2001.

As discussed in our proposed action at 70 FR 58117, we conclude that these revisions to the MECT program are consistent with section 110(l) of the Clean Air Act.

II. What is the Background for this action?

The MECT program was adopted as a State regulation on December 6, 2000. The program is mandatory for most NO_X-emitting stationary facilities in the HGB area. The program sets a declining cap on NO_X emissions beginning January 1, 2002, with the final cap level set in 2007. Each year, covered facilities receive NO_X allowances in an amount determined by a formula, which uses emission rates established in 30 TAC Chapter 117. An allowance is the authorization to emit one ton of NO_X during a control period; a control period is the calendar year. By March 1 each year, covered facilities must hold enough NO_X allowances to cover their emissions during the previous control period. Facilities may purchase, bank or sell their allowances. The MECT program has a provision to allow a facility to use emission reduction credits (ERCs) generated through the TCEQ Emission Credit Banking and Trading program to permanently increase its MECT allowances, but only if the credits were generated for NO_X in the HGB area before December 1, 2000. The MECT also has a provision to allow a facility to use discrete emission reduction credits (DERCs) and mobile discrete emission reduction credits (MDERCs) generated through the TCEQ Discrete Emission Credit Banking and Trading program in lieu of allowances if they are generated in the HGB area. EPA published a final rule approving the MECT program (except for the use of DERCs and MDERCs in the MECT, which we deferred acting on until our action on the DERC program) on November 14, 2001 (66 FR 57252). Texas has subsequently revised the MECT program in SIP submittals dated July 15, 2002, January 31, 2003, and December 6, 2004.

The MECT allowance allocations and resulting emission reductions were relied on in the HGB attainment demonstration submitted in 2000. As of 2000, the MECT rules were designed to reduce overall industrial NO_X emissions in the HGB area by approximately 90 percent.

Today's action approves several revisions to the MECT that TCEQ submitted to EPA on January 31, 2003, and December 6, 2004. These revisions made changes to support a shift from 90 percent control of industrial sources to 80 percent control in the HGB ozone nonattainment area, expanded the applicability of the MECT, updated and revised the provision of the MECT allowing for the use of DERCs and MDERCs in lieu of MECT allowances, and included a variety of non-substantive changes to correct grammar and reorganize the rule text for readability.

In our proposed approval of the MECT revisions (70 FR 58112), we stated that final action on the MECT would not occur until we published final approval of the attainment demonstration, which is being processed concurrently with this approval. For a further discussion of the attainment demonstration and EPA's responses to comments on this action, please see our action on the attainment demonstration (EPA–R06–OAR–2005–TX–0018).

Also in our proposed approval of the MECT revisions, we stated that the use of DERCs and MDERCs in the MECT program would not be federally approved until we published approvals of both section 101.356, which specifically provides for these uses and which we are acting on here, and the DERC program generally. EPA is publishing a final conditional approval of the DERC program concurrently with our action on the MECT. Therefore, the use of DERCs and MDERCs in the MECT is federally approved as of the effective date of these two rules, but all such uses must be consistent with the conditions of the DERC conditional approval. The TCEQ will not approve the use of any DERCs that were generated from shutdowns since September 30, 2002, and the use of banked shutdown DERCs generated before September 30, 2002, must occur within five years from the date of the commitment letter. In addition, with respect to all DERCs and MDERCs that are to be used in the MECT program, both generators and users of such credits must certify to a waiver of the Federal statute of limitations. EPA approval is also required when DERCs or MDERCs generated in another state or nation, and in either attainment or nonattainment areas (other than the HGB nonattainment areas) are requested for use in the MECT program. Please see the administrative record for our action on the DERC program for further information (EPA–R06–OAR–2005–TX–0029).

III. What are EPA's responses to comments received on the proposed action?

EPA's responses to comments submitted by Galveston-Houston Association for Smog Prevention (GHASP), Environmental Defense (Texas Office), the Lone Star Chapter of the Sierra Club, and Public Citizen (Texas Office) on November 4, 2005, are as follows. EPA has summarized the comments below; the complete comments can be found in the administrative record for this action (EPA–R06–OAR–2005–TX–0023).

Comment 1: EPA should not approve revisions to the SIP that increase the approved industrial NO_X cap level. Further, GHASP questions the technical basis for the alternative Emission Specifications for Attainment Demonstrations (ESADs) used by the TCEQ to establish the proposed NO_X MECT allocations.

Response to Comment 1: EPA disagrees with this comment. First, although the revisions to the allocation scheme represent a reduced level of

control as compared to the previous federally approved SIP, these revisions will nonetheless result in industrial NO_X emission reductions of approximately 80 percent as compared to year 2000 levels. Additionally, the reduction in NO_X emission controls from 90 percent to 80 percent will be countered by reductions in highly-reactive volatile organic compounds (HRVOCs) to achieve an equivalent level of air quality improvement.

Second, the reduction of the stringency of industrial NO_X controls (from approximately 90 percent to 80 percent) is not a component of the MECT revisions evaluated in this rule. The reduction from 90 percent to 80 percent control is actually the result of changes to the emission specifications for attainment demonstrations (ESADs) in 30 TAC Chapter 117. These Chapter 117 ESADs are then used in the MECT allowance allocation formulas in section 101.353. Our full response to this comment, which includes consideration of the changes to the Chapter 117 ESADs therefore appears in our action on the attainment demonstration for HGB (EPA–R06–OAR–2005–0018). This approach is logical because the change to 80 percent industrial NO_X controls is a part of the overall HGB attainment strategy, and should be evaluated in conjunction with other new features of that strategy, principally the addition of new controls for HRVOCs.

The MECT establishes a declining cap for NO_X emissions that is implemented in stages. Both the 90 percent NO_X control strategy and the 80 percent NO_X control strategy that replaced it allocate allowances based on emission goals that are a percentage of the baseline emission level. Allowances under the MECT were originally assigned based on 1997, 1998, and 1999 historical emissions or permit allowables. Section 101.353(a)(3) of the MECT controls the pace of implementation of the declining cap, while the revisions to Chapter 117 (which we are approving in our separate and simultaneous action on the attainment demonstration) reduce the stringency from a nominal 90 percent control to a nominal 80 percent control.

The effect of the change to a nominal 80 percent control strategy on the MECT will be to authorize a total number of MECT allowances in 2007 (the year the cap reaches its ultimate level) that is greater than it would have been under a nominal 90 percent strategy. As discussed in the attainment demonstration rule, however, the 80 percent strategy is consistent with attainment when combined with the other measures described in the attainment demonstration. Further, the final MECT allowance total under the 80 percent strategy will result in a reduced level of NO_X emissions when compared to the present. Therefore, the 80 percent control level, which will be fully implemented after the 2007 control period, still results in an actual emissions decrease from 2000 levels, and not an increase in emissions as suggested by the commenters.

Comment 2: The MECT lacks a formal oversight mechanism sufficient to address potential environmental justice concerns. The audit provisions in section 101.311 do not specifically provide for an evaluation of the geographic distribution of NO_X allowances, and even if a provision were included in the audit, this would not address concerns that environmental justice issues be resolved in a timely manner. Specifically, GHASP is concerned about the scenario in which large amounts of NO_X MECT allowances could be traded into Harris County and combine with the large amounts of reactive VOC emissions in the same area. This could result in higher ozone levels than predicted by current modeling. EPA should also consider requiring TCEQ to establish a separate trading zone for Harris County to address environmental justice concerns.

Response to Comment 2: EPA disagrees that an additional formal oversight mechanism for Harris County NO_X levels is needed to protect the region from environmental justice concerns. The MECT is a trading program involving primarily emissions of NO_X, although section 101.356(h) does provide that VOC DERCs or MDERCs can be used in lieu of NO_X allowances if a demonstration has been made and approved by the TCEQ Executive Director and EPA. Environmental justice concerns can arise when a final EPA rule, such as a trading program, could result in disproportionate burdens on particular communities, including minority or low income communities. Using this definition, environmental justice concerns can only arise when there is a potential for particular communities to be affected differently from the surrounding areas. This can occur for VOC programs because some VOC emissions have toxic components that can affect discrete areas.

While EPA has acknowledged, at section 4.2(b) of "Improving Air Quality with Economic Incentive Programs" (EPA–452/R–01–001, January 2001) (EIP Guidance), that programs that allow trading of VOCs can result in localized increases of VOCs, the MECT program is designed to avoid such increases. In particular, as discussed in our July 23, 2001, MECT proposal (66 FR 38240), the use of VOC reductions in place of NO_X allowances under the MECT can only drive VOC emissions lower. That is, because the only involvement of VOCs in the MECT program is the substitution of VOC decreases for NO_X increases, there is no scenario under which this program could allow higher VOC emissions than would otherwise occur. Moreover, NO_X (the focus of the MECT program) is an area-wide pollutant present throughout the HGB area, and therefore the trades of NO_X emissions pursuant to the MECT would not disproportionately impact a local community. Therefore, the HGB MECT does not have the potential to cause environmental justice concerns.

Further, the use of VOC DERCs or MDERCs in the MECT is subject to the stringent retirement ratios of section 101.356(h), which may result in more DERCs being retired than allowances used. Users of VOC DERCs and MDERCs must also obtain prior approval from the TCEQ according to section 101.376. The TCEQ will consider potential environmental justice concerns during this approval process.

For the above reasons, EPA concludes that the use of VOC DERCs and MDERCs in the MECT will not lead to a disproportionate impact on communities of concern.

Although we disagree that the MECT raises environmental justice concerns, GHASP's comment about the potential for high levels of ozone forming in Harris County is relevant to the future control strategy in the HGB area. The future MECT and HECT audits should closely analyze the interaction of the two programs and their combined impact on the HGB area.

Because of our conclusion that a NO_X trading program does not raise particular environmental justice issues, we also disagree that the MECT program requires additional oversight in order to address potential environmental justice concerns in a timely manner. As approved by EPA on November 14, 2001 (66 FR 57252), the MECT does have a formal audit provision that provides sufficient oversight to identify and address potential areas of concern. This audit provision is in section 101.363(a) of the MECT rules and requires TCEQ to conduct an audit every three years, beginning in 2004. The audit will evaluate the impact of the program on the State's ozone attainment demonstration, the availability and cost of allowances, compliance by the participants, and any other elements the TCEQ Executive Director may choose to include. The TCEQ Executive Director

will recommend measures to remedy any problems identified during the audit, including discontinuing allowance trading and use of discrete emission reduction credits and mobile discrete emission reduction credits. The audit data and results must be completed and submitted to EPA and made available for public inspection within 6 months from the beginning of the audit. TCEQ's first MECT audit, finalized in May 2006, is included in the administrative record for this rulemaking action.

The MECT audit provisions described above are consistent with EPA's expectations for evaluating the results of an economic incentive program (EIP), as outlined in section 5.3(b) of the EIP Guidance. Section 5.3(b) explains that an appropriate schedule for program evaluations is at least every three years, which coincides with other periodic reporting requirements such as those applicable to emission inventory requirements required by the CAA. EPA believes that the triennial MECT audit schedule and the required annual report (section 101.363(b)) that summarizes all MECT trades completed in the most recent control period will be sufficient to ensure the MECT does not jeopardize the HGB area's attainment strategy. Also, we note that the MECT audit may in any case consider environmental justice, because section 101.363(a)(1) provides that the audit may address "any other elements the executive director may choose to include."

As noted, we disagree with the commenters that the MECT program raises any environmental justice concerns. In addition, we disagree with their assertion that an increase in ozone formation resulting from large amounts of NO_X and HRVOC emissions is an issue of significant concern. We have reviewed the audit results for the 2002 and 2003 control periods, which show that MECT-subject facilities in all counties except Liberty County significantly reduced their total NO_X emissions from the historical baseline. Actual emissions in Harris County were reduced by 47.1 percent from the historical baseline in 2002 and 62.2 percent from the historical baseline in 2003. Actual emissions in 2003 for the entire HGB area were approximately 86,693 tons; which is already lower than the total amount of 2005 allocations of approximately 87,159 tons. TCEQ expects this trend to continue in future control periods as further reductions are implemented. Therefore, it is reasonable to conclude that under the MECT program Harris County will not have an increase in NO_X emissions that could result in increased ozone formation. Additionally, EPA continues to support TCEQ's attainment strategy for HGB where the MECT and HECT are integral to reducing levels of ozone. The administrative record for our final action on the HGB attainment demonstration may be found at docket number EPA–R06–OAR–2005–TX–0018.

Finally, EPA also disagrees that a separate trading zone should be established for Harris County to address environmental justice concerns. First, as mentioned above, if and when VOC DERCs and MDERCs are requested for use in lieu of NO_X allowances the TCEQ will consider potential environmental justice concerns during the approval process for such uses. (And in any case, as discussed previously, such use of VOC reductions in lieu of NO_X allowances can only drive VOC emissions lower.) Second, EPA has determined that NO_X emissions are a concern for the entire HGB ozone nonattainment area. Therefore, it is reasonable and appropriate to establish a cap-and-trade program for the entire nonattainment area.

EPA's response to BCCA Appeal Group (BCCAAG) and Texas Industry Project (TIP) comments made on November 4, 2005 is as follows:

Comment: BCCA Appeal Group and TIP support EPA's proposed approval of the revisions to the MECT program and urge EPA to finalize its approval as soon as practicable.

Response: EPA acknowledges the support of BCCAAG and TIP for our approval of revisions to the MECT.

IV. What does Federal approval of a State regulation mean To me?

Enforcement of the State regulation before and after it is incorporated into the federally approved SIP is primarily a State function. However, once the regulation is federally approved, the EPA and the public may take enforcement action against violators of these regulations. In addition, only regulations that have been federally approved can be credited toward an area's attainment or rate of progress plan. EPA is approving the revisions to the 1-hour ozone attainment plan for the HGB area to shift the control strategy from approximately 90 percent control of industrial NO_X emissions to 80 percent control (please *see* EPA–R06–OAR–2005–TX–0018). The revisions to the MECT enable the shift in the control strategy, and therefore must be approved with the attainment demonstration.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, 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 SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2006. 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 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended:

■ a. Under Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 3—Mass Emissions Cap and Trade Program, by revising the entries for sections 101.350, 101.351, 101.352, 101.353, 101.354, 101.356, 101.358, 101.359, 101.360 and 101.363;

■ b. Under Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification, Subchapter B—New Source Review Permits, Division 1—Permit Applications, by revising the entries for sections 116.111 and 116.115;

■ c. Under Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification, Subchapter B—New Source Review Permits, Division 7—Emission Reductions: Offsets, by revising the entry for section 116.170 and by adding a new entry for section 116.176;

■ d. Under Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification, Subchapter F—Standard Permits, by revising the entries for sections 116.610 and 116.615.

The addition and revisions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
* *	*	* *	*	*
Subchapter H—Emissions Banking and Trading				
* *	*	* *	*	*
Division 3—Mass Emissions Cap and Trade Program				
Section 101.350	Definitions	12/13/02	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.351	Applicability	12/13/02	[Insert date of *FR* publication] [Insert FR page number where document begins].	
Section 101.352	General Provisions	12/13/02	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
Section 101.353	Allocation of Allowances	12/13/02	[Insert date of *FR* publication] [Insert *FR* page number wheredocument begins].	
Section 101.354	Allowance Deductions	12/13/02	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.356	Allowance Banking and Trading	11/10/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.358	Emission Monitoring and Compliance Demonstration.	12/06/00	11/14/01, 66 FR 57252.	
Section 101.359	Reporting	11/10/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.360	Level of Activity Certification	12/13/02	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.363	Program Audits and Reports	09/26/01	11/14/01, 66 FR 57252.	
* * * * * * *				
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
* * * * * * *				
Subchapter B—New Source Review Permits Division 1—Permit Application				
* * * * * * *				
Section 116.111	General Application	03/07/01	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	The SIP does not include subsections 116.111(a)(2)(K) and 116.111(b).
* * * * * * *				
Section 116.115	General and Special Conditions	11/20/02	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	The SIP does not include subsection 116.115(c)(2)(B)(ii)(I).
* * * * * * *				
Division 7—Emission Reductions: Offsets				
Section 116.170	Applicability of Reduction Credits	06/17/98	09/18/02, 67 FR 58697.	The SIP does not include section 116.170(2).
Section 116.176	Use of Mass Cap Allowances for Offsets.	03/07/01	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * * * * * *				
Subchapter F: Standard Permits				
* * * * * * *				
Section 116.610	Applicability	03/07/01	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	The SIP does not include subsection 116.610(d).
* * * * * * *				
Section 116.615	General Conditions	03/07/01	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
* * * * * * *				

[FR Doc. 06–7411 Filed 9–5–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0018; FRL–8216–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Ozone Attainment Plan for the Houston/Galveston/Brazoria Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas State Implementation Plan (SIP) as it applies to the Houston/Galveston/Brazoria (HGB) ozone nonattainment area. These SIP revisions result from more recent information on ozone formation in the HGB area indicating that a combination of controls on nitrogen oxides (NO_X) and highly reactive volatile organic compounds (HRVOCs) should be more effective in reducing ozone than the measures in the previously approved 2001 HGB attainment demonstration plan which relied almost exclusively on the control of NO_X. Approval of these revisions incorporates these changes into the federally approved SIP.

The approved revisions include a 1-hour ozone standard attainment demonstration, motor vehicle emissions budgets, a demonstration that all reasonably available control measures have been adopted for the HGB area and revisions to satisfy the enforceable commitments contained in the previously approved SIP. These revisions present a new mix of controlled strategies in order to achieve attainment. These revisions include changes to the industrial NO_X rules, reducing the stringency from a nominal 90 percent to 80 percent control and revisions to the Texas Inspection and Maintenance (I/M) rules that drop three counties from the I/M program.

As part of the approved revisions to the HGB attainment demonstration, Texas has adopted new control measures which EPA has approved or is approving concurrent with this action. The new control measures are increased control of HRVOC emissions and control of emissions from portable gasoline containers. Also, in separate actions in today's **Federal Register**, EPA is concurrently approving the following emissions trading programs that relate to the HGB attainment demonstration: revisions to the Mass Emissions Cap and Trade Program for the HGB area, the Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the HGB area, the Emissions Credit Banking and Trading Program, and the Discrete Emissions Credit Banking and Trading Program.

The SIP revisions to the HGB attainment demonstration addressed in this rulemaking along with the HRVOC rules and emissions trading programs being concurrently approved, will provide for timely attainment of the 1-hour ozone standard in HGB as demonstrated through the modeling analysis. Additionally, Texas has shown that these revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Clean Air Act. (Section 110(l) demonstration).

DATES: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–2005–TX–0018. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day

of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Erik Snyder, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7305; fax number 214–665–7263; e-mail address *snyder.erik@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we", "us", or "our" is used, we mean the EPA.

Table of Contents

I. Final Action

A. What Is the Background for This Action?

On October 5, 2005, we proposed approval of the revisions to the SIP as it applies to the HGB ozone nonattainment area (70 FR 58119). The proposal provided a detailed description of these revisions and the rationale for our proposed actions, together with a discussion of the opportunity to comment. The proposed HGB attainment demonstration revisions relies upon four separate actions that EPA proposed for approval on October 5, 2005: Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the HGB Ozone Nonattainment Area (70 FR 58138), Discrete Emission Credit Banking and Trading Program (70 FR 58154), Emissions Banking and Trading Revisions for the Mass Emissions Cap and Trade Program for the HGB Ozone Nonattainment Area (70 FR 58112), and a Emission Credit Banking and Trading Program (70 FR 58146). The public comment period for these proposed actions closed on November 4, 2005. One adverse comment letter and one comment letter supporting our action were received. The proposed SIP revision also relies upon a separate action that EPA proposed for approval on April 7, 2005 (70 FR 17640) that included HRVOC rules requiring sources to monitor and control HRVOCs. For more information, see the Technical Support Documents or the proposal notices for the attainment demonstration or the five other notices. This SIP revision also relies upon a separate action that included measures controlling emissions from portable gasoline containers that EPA approved on February 10, 2005 (70 FR 7041).

The following submissions from Texas which requested revision of the HGB SIP were considered for this action:

January 28, 2003: This submission responded to the State's settlement agreement to provide an accelerated evaluation of whether the industrial NO_X controls could be substituted with controls on HRVOCs. Based on the study, the commission adopted rules substituting controls on NO_X emissions from industrial sources with new controls on HRVOCs. Texas also adopted a number of minor revisions to the general VOC rules. Finally, the State also provided a demonstration that Texas Emission Reduction Program (TERP) emission reductions would be sufficient to achieve 25 percent of the NO_X reductions needed to demonstrate attainment, *i.e.*, about 14 tons per day (tpd).

October 16, 2003: This submission delayed compliance for the I/M program in Chambers, Liberty and Waller Counties. (Docket EPA–R06–OAR–2005–TX–0035.)

October 6, 2004: This submission repealed the I/M program in Chambers, Liberty and Waller Counties. (Docket EPA–R06–OAR–2005–TX–0035.)

November 16, 2004: This submission repealed a ban on morning operations of lawn service contractors.

December 17, 2004: This submission met the State's commitment to provide a mid-course review SIP. Based on the updated analysis, the State further tightened controls on HRVOCs in Harris county and revised or repealed a number of NO_X control measures including, the vehicle idling prohibition, the speed limit strategy, the voluntary mobile emissions program and the commitment to achieve NO_X reductions beyond the initial 25 percent provided in January 2003 (*i.e.*, revoked the State's enforceable commitment to achieve 42 tpd of the NO_X reductions that was included as part of the prior attainment demonstration).

B. What Action Is EPA Taking?

We are approving the following revisions to the 1-hour ozone attainment plan for the HGB area:

- TCEQ's revised demonstration, submitted December 17, 2004, that the 1-hour ozone standard will be achieved in 2007, as required by the Texas State Implementation Plan, even though the ozone 1-hour NAAQS was revoked in June 2005.
- The revised motor vehicle emissions budgets associated with the revised attainment demonstration. The revised 2007 budgets are 89.99 tons per day (tpd) for volatile organic compound emissions and 186.13 tpd for NO_X emissions.
- TCEQ's revised demonstration that all reasonably available control measures have been adopted for the HGB area.
- Revisions to satisfy the enforceable commitments contained in the previously approved SIP (November 14, 2001, 66 FR 57160). With respect to its original enforceable commitment to reduce NO_X emissions, TCEQ has instead substituted reductions in HRVOCs for a portion of these NO_X reductions and shown that the HRVOC reductions provide equivalent air quality benefits in reducing ozone levels.
- Revisions to the industrial NO_X rules submitted January 28, 2003, which included several miscellaneous changes and the reduction in stringency from a nominal 90 percent to 80 percent control.
- Revisions to the Texas I/M rules that drop three counties from the I/M program. In addition, several miscellaneous changes are approved.
- Repeal of the vehicle idling rule.
- Repeal of the Small Spark Engine Operating Restrictions.
- Revisions to the Speed Limit Strategy.
- Revisions to the voluntary mobile emissions program.

Our proposal to approve the revisions was published in the **Federal Register** on October 5, 2005 (70 FR 58119). Table 1 lists the revised elements of the HGB ozone SIP we are approving in this action.

TABLE 1.—REVISED ELEMENTS OF THE HGB OZONE SIP BEING APPROVED BY EPA

Element	Date submitted to EPA	Comments
1-hour standard attainment demonstration revisions.	12/17/04	Please see our proposed action and technical support document for more information.
Revised motor vehicle emissions budgets for 2007.	12/17/04	Revised budgets are 89.99 tpd for volatile organic compounds and 186.13 tpd for NO_X.
Reasonably available control measures demonstration.	12/17/04	Please see our proposed action and technical support document for more information.
Revisions to satisfy the enforceable commitments contained int he previouisly approved SIP (November 14, 2001, 66 FR 57160).	12/17/04	Please see our proposed action and technical support document for more information.
Revisions to the industrial NO_X rules which included several miscellaneous changes and the reduction in stringency from a nominal 90% to 80% control.	1/28/03	Revisions to 30 TAC Chapter 117, Sections 117.10, 117.105–117.108, 117.113–117.116, 117.119, 117.131, 117.135, 117.138, 117.141, 117.143, 117.149, 117.203, 117.205–117.207, 117.213–117.216, 117.219, 117.223, 117.301, 117.309, 117.311, 117.313, 117.319, 117.321, 117.401, 117.409, 117.411, 117.413, 117.419, 117.421, 117.463, 117.465, 117.473, 117.475, 117.478, 117.479, 117.510, 117.512, 117.520, and 117.534. Repeal of 30 TAC Chapter 117, Sections 117.104, 117.540, and 117.560.
Revisions to the Texas I/M rules that drop three counties from the I/M program and make several miscellaneous changes.	10/6/04	Revisions to 30 TAC Chapter 114, Sections114.1, 114.2, 114.50, 114.52, and 114.53.
Repeal of the vehicle idling rule	12/17/04	Repeal of 30 TAC Chapter 114, Sections 114.500, 114.502, 114.507, and 114.509.
Repeal of the Small Spark Engine Operating Restrictions.	11/16/04	Repeal of 30 TAC Chapter 114, Sections 114.452 and 114.459.
Revisions to the voluntary mobile emissions program.	12/17/04	Please see our proposed action and technical support document for more information.

Texas has adopted a revised attainment demonstration that includes the following new control measures:

- Hourly (short-term) limit and Annual Cap on HRVOC emissions.
- Improved requirements for HRVOC Leak Detection and Repair Program for fugitive emissions and flare monitoring.
- Requirements for portable gasoline containers. (EPA approved February 10, 2005.)

We approved the measure controlling emissions from portable gasoline containers on February 10, 2005 (70 FR 7041). The SIP revisions addressed in this rulemaking in conjunction with the new HRVOC rules, will provide for timely attainment of the 1-hour ozone NAAQS as demonstrated through the modeling analysis. In addition, Texas has shown that these revisions will not interfere with any applicable requirements concerning attainment and reasonable further progress, or any other applicable requirement of the Clean Air Act, (Section 110(l)).

C. What Other SIP Elements Did We Need To Take Final Action on Before We Could Approve the Revised Attainment Demonstration?

In our proposed action we explained that we could not finalize approval of the revised attainment demonstration for HGB until we finalized approval of several related actions. These actions are discussed below. In a separate rulemaking published in this issue of the **Federal Register** we are approving the new measures to control HRVOC emissions as part of the basis for this approval of revisions to the HGB attainment SIP. In this action, when we refer to this program as "the HRVOC rule" or "the HRVOC control program", we are speaking of the entire rule package entitled "Control of Highly Reactive Volatile Organic Compound Controls". (Docket ID No. EPA–R06–OAR–2005–TX–0033.)

The HRVOC rules were adopted by TCEQ based on recent findings that certain highly reactive chemicals (ethylene, propylene, 1,3 butadiene and butenes) contribute disproportionately to the ozone problem in the HGB area. EPA previously issued a proposed approval of the HRVOC rules on April 7, 2005 (70 FR 17640).

In separate rulemakings published in today's **Federal Register** we are approving additional measures related to the Revised 1-hour ozone Attainment Demonstration for HGB. These rules include the HRVOC Emissions Cap and Trade Program for the HGB ozone nonattainment area, Discrete Emission Credit Banking and Trading Program (conditional approval), Emissions Banking and Trading Revisions for the Mass Emissions Cap and Trade Program for the HGB ozone nonattainment area, and an Emissions Credit Banking and Trading Program. These actions are further discussed in Section II.B. of this notice.

II. What Revisions to the State Implementation Plan Are Being Approved Here or in Other Concurrent Actions?

A. One Hour Attainment Demonstration

As required by the Clean Air Act, Texas has used photochemical grid modeling in its demonstration that the control strategy for the HGB area will achieve attainment of the 1-hour ozone NAAQS by 2007. Also, as allowed for under EPA policy, TCEQ has introduced other evidence, referred to as weight of evidence, to supplement the modeling analysis. The modeling provided in the mid-course review SIP revision builds on modeling performed for the January 2003 SIP revision which TCEQ submitted in support of reducing the stringency of the industrial NO_X rules and adopting measures for the control of HRVOCs.

This SIP revision actually relies on two sets of modeling analyses. First, it relies on modeling performed by the TCEQ that is intended to simulate the routine emissions that occur in the HGB area and determine the level of routine emissions that can be allowed in the area yet still provide for attainment. Second, the SIP relies on modeling that was provided through a collaborative effort (known as project H13) of the Houston Advanced Research Center, the TCEQ, the University of Texas and the University of North Carolina. The project H13 report was entitled,

"Variable Industrial VOC Emissions and Their Impact on Ozone Formation in the Houston Galveston Area," April 16, 2004. This second modeling effort was used to estimate the impact of non-routine emission events on ozone levels. This two-pronged approach is consistent with observations that indicate that Houston's air quality problems stem from the combination of two phenomena, normal routine emissions and large non-routine releases of HRVOC emissions. For a more complete description of the modeling procedures and EPA's evaluation of these procedures, see the Technical Support Document (TSD) in the Docket for this action (RO6–OAR–2005–TX–0018) and the FR proposal notice October 5, 2005 (70 FR 58119).

B. New Control Measures

TCEQ has adopted the following new control measures since the previously approved SIP revision:

- Hourly (short-term) limit and Annual Cap on HRVOC emissions.
- Improved requirements for HRVOC Leak Detection and Repair Program for fugitive emissions and flare monitoring.
- Requirements for portable gasoline containers. (EPA approved February 10, 2005).

1. Hourly (Short-Term) Limit and Annual Cap on HRVOC Emissions

As discussed in the proposal notice (70 FR 58119) and Technical Support Document (TSD), Texas relied primarily on two sets of modeling in developing its control strategy. One set of modeling, performed by TCEQ, is largely a traditional model formulation that examines the routinely variable emissions which occur in the HGB area. Through this modeling, TCEQ established that NO_X emissions would not have to be reduced as much as previously planned and routine emissions of highly-reactive VOC emissions would have to be reduced. Through the second set of modeling, examining the impact of large non-routine releases of HRVOCs, it was established that the frequency and magnitude of large non-routine releases of HRVOCs should also be reduced.

Using both sets of modeling, TCEQ developed a key feature of the HGB attainment strategy: Routine HRVOC emissions are targeted and reduced through an annual cap-and-trade program, while the non-routine emissions from emission events, maintenance, start-up and shutdown are controlled through a short-term limit of 1200 lbs/hour. In a related rulemaking in today's **Federal Register**, EPA is concurrently approving the Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program to control routine emissions of HRVOCs (see EPA–R06–OAR–2005–TX–0033). Unique to the HGB attainment strategy, exceedances of the short-term limit are not counted toward compliance with the annual cap but are still subject to enforcement as a violation of the short-term limit.

Again, EPA recognizes that the approach of providing this partial exclusion for emissions above the short-term limit is a departure from practices in other cap and trade programs such as the acid rain program and our guidance. We currently believe this approach is only warranted in consideration of the Houston area's unique situation that combines an extensive petrochemical complex and the availability of the extensive data and analysis that were generated by the intensive ozone study, TxAQS 2000 and in conjunction with a short-term limit. Consideration of this novel approach is warranted in order to balance the need to reduce both routine and upset emissions of HRVOC, but also recognizes that large upset emissions are difficult to control in the petrochemical industry and one significant event could result in a facility consuming more than a month's emission allotment.

2. Improved Requirements for HRVOC Leak Detection and Repair Program for Fugitive Emissions and Flare Monitoring

TCEQ has implemented a number of new requirements for leak detection and repair of components in HRVOC service. The changes include, among other things, the following improvements:

- Inclusion of connectors in the program.
- Inclusion of other non-traditional potential leak sources such as heat exchanger heads and man-way covers.
- Elimination of allowances for skipping leak detection periods for valves.
- Requirements for third party audits to help insure that effective leak surveys and repairs are conducted.
- Requirements that "extraordinary" efforts be used to repair valves before putting them on the delay of repair list.

For purposes of estimating emissions for compliance with the Short-term and annual caps, TCEQ adopted rules requiring companies to assume specific flare destruction efficiencies for properly operating flares and for when a flare operates outside the parameters of 40 CFR 60.18. EPA is approving the estimates used for flare destruction efficiency for use in the attainment demonstration because the estimates are based on the best information available. We, however, remain concerned about the uncertainty created in the attainment demonstration by having a significant source of emissions which cannot be directly measured.

We note that some operating parameters for flares such as steam and air assist ratios are not covered specifically by 40 CFR 60.18 but some studies have indicated these parameters can impact flare efficiency. Because of the prevalence of flares in the HGB area, we believe Texas should strongly consider, for both flares in HRVOC service and general VOC service, requirements for monitoring steam and air assist ratios to insure that operators maintain these parameters, not covered by 40 CFR 60.18, in a range to insure optimum combustion. We also encourage TCEQ to pursue new technology such as the Fourier Transform Infrared Spectrophotometer which would eventually allow the direct measurement of destruction efficiency in the field.

For a full discussion of the improvements to these programs, see the Proposal Notice and Technical Support Document for this action. EPA is approving the emission reductions that have been projected for the improved leak detection and repair rules. Our approval is based on the improvements to the fugitive rule and Texas' commitment to perform a rule effectiveness study and use improved emission inventory techniques to estimate future emissions to confirm the effectiveness of the program.

3. Requirements for Portable Gasoline Containers

TCEQ has adopted standards for portable fuel containers sold in the State which provide requirements to prevent leaks and spills. EPA approved the TCEQ rules on February 10, 2005 (70 FR 7041). TCEQ projected 2.9 tons/day of VOC emission reductions that are included in the revised attainment demonstration modeling.

C. What Control Measures Have Been Revised or Repealed?

Texas has revised a number of control strategies that were included in the previously approved SIP. A brief description of the revisions that EPA is approving follows. More details are provided in the proposal notice (70 FR 58119) and Technical Support Document (TSD) materials.

Industrial NO_X Controls: Texas revised its NO_X rules to reduce the controls from a nominal 90 percent control to 80 percent control. We are approving the revisions to industrial NO_X controls in the HGB area.

Vehicle Inspection and Maintenance Program in Three Rural Counties: TCEQ has dropped the requirement for I/M in Waller, Liberty and Chambers Counties. We are approving the removal of the I/M program in these three counties.

Removal of Small, Spark-Ignition Engine Operating Restrictions: TCEQ has dropped this requirement which would have prohibited commercial lawn services from operating during the morning hours. We are approving the removal of these operating restrictions on small, spark-ignition engines.

Speed Limit Strategy from a 55 mph Maximum Speed Limit to a 5 Mile Reduction in Speed Limits from Previous Levels: The Texas legislature repealed TCEQ's authority to implement speed limits for environmental purposes. Texas Department of Transportation had already reduced speeds in the HGB area by 5 mph from 70 mph to 65 mph and from 65 to 60. These reductions in speed limits of 5 mph remain in place, but the reductions that would have been achieved by reducing speed limits on all roads further to 55 mph will not be achieved.

Removal of the Vehicle Idling Restriction: This measure that would have prohibited prolonged idling of heavy duty diesel vehicles has been repealed. We are approving the repeal of this rule.

Revision to Delay the Compliance Date for Gas Fired Water Heaters and Small Boilers: This rule is not being repealed, but its compliance date has been delayed from December 31, 2004 to January 1, 2007. This rule requires new water heaters sold in Texas to achieve lower NO_X emission rates.

We are not approving changes to the rules for control of water heaters at this time. It is a Statewide rule and the changes to the rule impact other areas of the State and we have not yet analyzed the above issues in areas of the State other than Houston. We note only that the changes to the water heater rules do not impact the approvability of the Houston mid-course review SIP revision.

Revisions to the Voluntary Measures: Texas has revised the voluntary mobile emissions program (VMEP) portion of the SIP. The VMEP portion of the SIP that was approved in 2001, and was projected to achieve 23 tpd of emissions reductions through various voluntary and often innovative measures. TCEQ has recalculated the benefits as yielding 7 tpd of NO_X emission reductions. We are approving the revisions to the VMEP.

D. Reasonably Available Control Measures

A brief description of the Reasonably Available Control Measures (RACM) revisions follows, for more details see the proposal notice (70 FR 58119) and Technical Support Document (TSD) materials.

In EPA's November 14, 2001 notice approving the plan for the HGB nonattainment area, EPA approved the analysis showing the plan was implementing all Reasonably Available Control Measures. The NO_X reduction requirements of that plan were so substantial no additional RACM measures could be identified in time for adoption as a part of that plan and the State had to make an enforceable commitment to adopt additional NO_X measures which were expected to be feasible in the near future. Now, based on the findings of the mid-course review, Texas has determined that the NO_X reductions necessary for attainment, while still substantial, are not as great and that control of HRVOCs is a more effective way of reducing ozone. Both NO_X and HRVOC controls, necessary for attainment, will be fully implemented the last year of the strategy. In the last year of the strategy, the point source controls alone will achieve an estimated 39 tpd of NO_X reductions (based on review of the TCEQ's Mass Cap-and-Trade Registry). Reductions in on- and off-road emissions will also occur. Therefore, to advance attainment, additional reductions on the order of 39 tpd would have to be achieved before the ozone season of 2006. In Section 5.4 of the State Implementation Plan, Texas explains why even with the repeal and revision of the measures, Texas believes the RACM requirement is still being met. What follows is a brief summary of EPA's evaluation of each of the revisions being approved.

Industrial NO_X Controls: TCEQ has relaxed the NO_X rules for a number of NO_X point source categories. The original controls achieved a nominal 90% reduction in point source emissions, with some categories reducing more than 90% and some less than 90%. The new rules, being approved here today, achieve a nominal 80% control. It is a convenient short hand to refer to the control levels as 90% or 80% even though this does not accurately state the level of reduction for individual source categories. TCEQ has argued that the 90% controls would not advance attainment because the current 80% control levels are scheduled to be implemented in 2007 and it would not be reasonable to expect that a more stringent 90% control could be implemented faster to advance attainment. EPA previously agreed that the most expeditious schedule for the 90% controls would be by 2007. EPA continues to believe that to be the case so that implementation of 90% controls would not advance attainment. Even at the 80% control level, the TCEQ rules are still similar in stringency to the control levels implemented in California which have generally been considered the most stringent in the country.

Repeal of the I/M Program in 3 Rural Counties: Texas has chosen to reduce the scope of its I/M program from eight counties to five counties. The three counties that are being dropped are Chambers, Liberty and Waller Counties which are the most rural counties in the nonattainment area. The program was scheduled to be implemented in 2005. Using Mobile6, Texas has estimated that the program would achieve 0.87 tpd of emission reductions which is a smaller reduction estimate than the Mobile 5 estimate included in the 2000 SIP and is less than 0.2% of the projected emissions for the area in 2007. Because of the small amount of emission reductions, implementation of I/M in these three counties would not be expected to advance attainment and therefore should not be considered RACM.

Removal of Small Spark Operating Restrictions: This measure would prohibit lawn and garden service contractors for operation in the morning hours from 6 am to 10 am. This measure was due to be implemented in 2005. Texas decided that attainment could be reached without the implementation of this measure. The measure was estimated to achieve the equivalent of 7.7 tons/day of NO_X emission reductions. As such, its implementation would not advance the attainment date. Therefore, EPA believes the morning lawn service ban should not be considered a reasonably available control measure for the HGB area.

Speed Limit Strategy: The previously approved SIP provides for the speed limits in the eight county area to be reduced to 55 mph. Later, TCEQ decided to delay the implementation of the 55 mph until 2005, but would implement speed limits that are 5 mph lower than the previous speed limits, lowering 70 mph speed limits to 65 mph and 65 mph limits to 60 mph starting in 2001. In the 2004 SIP revision, TCEQ decided to make permanent the interim limits and forgo lowering the speed limits to 55 mph. Based on Mobile6, lowering speeds all the way to 55 mph would be expected to reduce emissions 2–3 tons/day. This is a lower estimate

of emission reductions than predicted by Mobile5 in the 2000 SIP revision. This small amount of emission reduction would not advance attainment in the Houston area and therefore this measure is not considered RACM.

Vehicle Idling Restriction: Texas is dropping a rule that prohibits idling of heavy duty vehicles for more than five minutes in the Houston area. The measure was estimated to reduce NO_X emissions by 0.48 tpd. Texas decided that attainment could be reached without the implementation of this measure. This small amount of emission reduction would not advance attainment for the area and therefore should not be considered RACM.

Delay in Compliance for the Water Heater Rule: In this case, TCEQ still intends to implement the rule, but has delayed compliance until 2007. Since the adoption of the current rule, two American National Standards Institute (ANSI) standards (the flammable vapor ignition resistance standard and the lint, dirt, and oil standard); the United States Department of Energy (DOE) energy efficiency standard; and the EPA insulation foam ban have been implemented. The ANSI lint, dirt, and oil standard and the flammable vapor ignition resistance standard were effective on July 1, 2003, and were established for gas-fired water heater safety reasons. The DOE energy efficiency standard was effective on January 20, 2004. The EPA foam ban was effective on January 1, 2003, and affects gas-fired water heaters, as water heater manufacturers have historically used hydrochlorofluorocarbon as a blowing agent for creating foam insulation. The implementation of these standards has delayed the progression of the water heater technology and design. Therefore, a design that meets the 10 ng/J emission limit in the Texas rule will not be available for sale in the market by the January 1, 2005 compliance date.

Because the new federal standards affect the design of new water heaters and have made it impractical for the industry to meet Texas's NO_X limits for water heaters in a timely manner, EPA agrees that this measure is being implemented as expeditiously as is technically practicable. In other words, earlier implementation is not technically practicable and therefore, since it would be infeasible, it would not advance attainment.

We have reviewed these changes in RACM that are summarized above and discussed these changes in greater detail in our TSD. We are approving these changes to RACM as part of the approval of this attainment demonstration revision approval and determining that TCEQ has satisfied the RACM requirements.

E. Section 110(l) Analysis

A brief description of the 110(l) analysis follows, for more details see the proposal notice (70 FR 58119) and Technical Support Document (TSD) materials. Section 110(l) of the Clean Air Act says:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

As previously discussed, Texas has developed a revised strategy which relies on fewer reductions of NO_X and more reductions of VOC. Texas determined that the revisions will not interfere with attainment or reasonable further progress or any other applicable requirement under the Act and after careful review, EPA agrees. Texas has completed the revised attainment demonstration with respect to the 1-hour standard which is being approved today. Attainment demonstrations for the 8-hour standard are not required until June 2007.

Prior to the time that attainment demonstrations are due for the 8-hour ozone standard, it is unknown what suite of control measures a State will choose to adopt for a given area to attain that standard. During this period, to demonstrate no interference with the 8-hour NAAQS, EPA believes it is appropriate to allow States to substitute equivalent emission reductions (to compensate for control measures being removed) which result in equal or greater air quality benefit than those reductions being removed from the approved SIP. EPA believes that preservation of the status quo in air quality during the time in which new attainment demonstrations are being developed for the 8-hour ozone NAAQS will prevent interference with the States' obligations to develop timely attainment demonstrations and to attain as expeditiously as practicable.

To show that the compensating emission reductions are equivalent, modeling or adequate analysis must be provided. The compensating emission reductions must provide actual, new emission reductions achieved in a contemporaneous time frame in order to preserve the status quo. In addition, the emission reductions must be permanent, enforceable, quantifiable, and surplus to be approved into the SIP. EPA has determined that the revised HGB SIP has met each of these requirements. See the proposal notice (70 FR 58119) and Technical Support Document (TSD) materials.

Contemporaneous: While contemporaneous is not defined in the Clean Air Act, a reasonable interpretation is that the compensating control measures be implemented within one year of the time frame for the control measure being replaced. In this case, the new control measures being used as substitutes are being implemented in virtually the same time frames as the measures being replaced. The new measures have the following compliance dates: tighter controls on HRVOC fugitive emissions by March 31, 2004, monitoring for the HRVOC cap by 2005, compliance with the HRVOC cap starting in 2006, and gas can rule implementation in 2007. The measures being replaced, which are listed previously in this notice, with the exception of the vehicle idling ban, all had compliance dates in the approved SIP of 2005 or later. In particular the largest emission reduction change by far, the difference between 90 percent and 80 percent control on NO_X, was not scheduled to be fully realized until 2007. The enforceable commitment measures only provided that the measures would be adopted by May 2004 and compliance would be achieved as expeditiously as possible but no later than the beginning of the ozone season in 2007. Therefore, it can be assumed the emission reductions from the NO_X enforceable commitments, had they been implemented, would not have occurred before the 2005–2006 time frame, a time frame similar to that for the measures to control HRVOCs which Texas has adopted a substitute. With regard to the vehicle idling restrictions, the compliance date for this rule was May of 2001. It was projected to achieve 0.48 tpd of NO_X emission reductions. It was discontinued effective December 23, 2004. The improved HRVOC fugitive controls which began implementation in March of 2004, more than offset the small reductions lost by the discontinuation of the motor vehicle idling program after December 23, 2004.

Equivalent: To demonstrate that the emission reductions were equivalent, the TCEQ used the photochemical model to demonstrate that the total collection of strategies in the current SIP revision is equivalent or better in 8-hour ozone reduction effectiveness as compared with the total collection of strategies in the SIP that was approved in 2001, including the reductions that

would have occurred due to measures to meet the enforceable commitments. Several 8-hour ozone metrics were calculated. EPA believes that the new strategy and the old strategy are approximately equivalent in 8-hour ozone benefit, with the new strategy slightly more effective in reducing the peak ozone values and the old strategy slightly more effective in reducing the predicted area of exceedances. Taking all of the metrics into consideration and recognizing the uncertainties in the modeling, we believe that Texas has demonstrated that the new strategy is equivalent to the old strategy in 8-hour ozone benefit.

Permanent: The emission reductions from the HRVOC rules are permanent as sources will have to maintain compliance with new measures indefinitely.

Enforceable: EPA has reviewed the enforceability of the substitute measures in separate rules.

The Portable Fuel Container Rule was approved: February 10, 2005, 70 FR 7041. EPA is also approving concurrently in a separate notice the fugitive emission controls and improved monitoring requirements for HRVOCs (proposal on April 7, 2005, 70 FR 17640). Finally, concurrent with this **Federal Register** notice EPA is approving the HECT program. In each of these rulemakings, EPA has evaluated whether the substitute rules are enforceable, considering such issues as whether the rules have adequate test methods, monitoring requirements, record keeping requirements and whether the State has adequate enforcement authority to ensure the limits are achieved. By our approval elsewhere in the **Federal Register** today, these substitute rules are federally enforceable and enforceable by the public through citizen suit.

In summary, we believe the substitute measures result in equivalent 8-hour benefit and that the new measures are contemporaneous, enforceable and permanent. Therefore, we believe approval of these revisions to the approved SIP will not interfere with attainment of the 8-hour standard.

The 1-hour standard was revoked on June 15, 2005 for the HGB area. The approved SIP, however, committed the State to adopt control measures of 56 tpd of NO_X, unless the State could show that these NO_X reductions were not needed for attainment of the 1-hour standard. We have discussed elsewhere in this notice (and in the proposal and TSD), EPA's evaluation of the revised 1-hour attainment demonstration and are approving these revisions.

Texas submitted, and EPA has approved, revisions to the rate of progress (ROP) plan (February 14, 2005, 70 FR 7407) based on the revised strategy. These revisions will ensure that 1-hour ROP is met for each three year period out to the 1-hour attainment date of November 15, 2007.

Other than for ozone, the HGB area currently meets all other National Ambient Air Quality Standards. The plan revisions being considered would not be expected to impact compliance with the CO, SO_2 or Lead NAAQS as these pollutants are not affected by these rules.

The revisions to the NO_X rules do affect emissions of NO_2 and thus could potentially impact attainment with the NO_2 standard. The HGB area, however, meets the NO_2 standard at today's level of NO_2 emissions and the revised plan will reduce NO_2 emissions dramatically from existing levels and thus will not interfere with maintenance of the NO_2 standard.

Similarly, the HGB area currently meets the NAAQS for $PM_{2.5}$. NO_X and VOCs are precursors to the formation of $PM_{2.5}$. Although the revised plan does not reduce NO_X emissions as much as the previous attainment demonstration SIP revision approved by EPA in November 2001, the revised plan will result in additional NO_X and VOC reductions beyond today's levels (emission levels at the time of this notice). Therefore, the revised plan will not interfere with the continued attainment of the $PM_{2.5}$ standard.

Section 110(l) applies to all requirements of the Clean Air Act. Below are requirements potentially affected by TCEQ's rule change and a brief discussion of EPA's analysis.

Reasonably Available Control Technology (RACT) requirements: EPA has previously approved the NO_X and VOC rules in the HGB area as meeting the CAA's RACT requirements. The revised NO_X rules remain substantially more stringent than the previously approved RACT requirements. The new HRVOC rules build on the previously approved RACT requirements. In addition, these revisions do not impact the major sources applicability cutoffs. Therefore, these revisions do not interfere with the implementation of RACT.

Inspection and maintenance programs (I/M): This revision drops three counties from the I/M program. These counties are not included in the urbanized area as defined by the Census Bureau. Thus, I/M is not required to be implemented in these counties and these revisions do not interfere with meeting the I/M requirements of the CAA.

Air Toxics: There are no Federal ambient standards for air toxics and these rules do not interfere with implementation of any federal MACT standards, therefore, these rule revisions do not interfere with compliance with any air toxics standards under sections 112 or 129 of the CAA. We note that air toxic levels of butadiene and formaldehyde are expected to decrease as a result of the revised plan, because the HRVOC rules directly regulate emissions of butadiene and ethylene. Formaldehyde is formed from ethylene in the photochemical reactions leading to ozone.

F. Enforceable Commitments

In the SIP approved in November 2001, there were enforceable commitments to achieve additional NO_X reductions and enforceable commitments to incorporate the latest information into the SIP. This section contains a brief summary of the enforceable commitments which were approved in the November 2001 **Federal Register** and a short discussion of how they were met or are being revised.

Commitment: To perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004.

Discussion: Texas provided, in the December 2004 submission, a mid-course review that included new modeling with new more recent episodes (including updated emissions) based on the Texas 2000 study. The State submitted control measures that, based on the demonstration, will result in attainment of the 1-hour standard as expeditiously as practicable. Therefore, EPA believes the commitment for a mid course review has been satisfied.

Commitment: To perform new mobile source modeling for the HG area, using Mobile6, EPA's on-road mobile emissions factor computer model, within 24 months of the model's release.

Discussion: The mid-course review modeling employed Mobile6 for the on-road mobile source inputs satisfying this commitment.

Commitment: If a transportation conformity analysis is to be performed between 12 months and 24 months after the Mobile6 release, transportation conformity will not be determined until Texas submits an MVEB which is developed using MOBILE6 and which we find adequate.

Discussion: This commitment was not applicable because transportation

conformity was not performed during the time period.

Commitment: To adopt rules that achieve at least the additional 56 tpd of NO_X emission reductions that are needed for the area to show attainment of the 1-hour ozone standard, including the adoption of measures to achieve 25% (14 tpd) of the needed additional reductions (56 tpd), and to submit those adopted measures to EPA as a SIP revision by December 2002. To adopt measures for the remaining needed additional reductions and submit these adopted measures to EPA as a SIP revision by May 1, 2004.

Discussion: In the January 28, 2003 submission, TCEQ provided the demonstration that the TERP program meets EPA's requirements as an economic incentive program and will achieve the required 14 tons/day of emissions reductions. EPA has approved the TERP program in a separate **Federal Register** action which discusses how the TERP program meets the EIP requirements (August 19, 2005, 70 FR 48647). Through the attainment year of 2007, 38.8 tons/day of emission reductions are projected for the TERP program based on a $5,000/ton cost effectiveness. The total obligation for emission reductions from TERP is 32.9 tpd. TERP originally replaced two measures: a morning construction ban (6.7 tpd NO_X equivalent) and accelerated introduction of Tier II/III equipment (12.2 tpd). After allocating 18.9 tpd from TERP to replace these two measures, the program still is projected to produce an additional 19.9 tpd of reductions which is sufficient to provide the additional 14 tpd of emissions reductions needed to meet the enforceable commitment. Thus, EPA believes the enforceable commitment to achieve 25% of the 56 tpd of NO_X reductions has been satisfied.

We note two developments with the program. The average cost effectiveness of TERP projects, to date, is $5500/ton and the Texas legislature moved to cut some of the funding for the program in the last session. TCEQ may have to shift some of the TERP funding from other areas such as Corpus Christi or Victoria, which currently meet the 8-hour ozone standard, to the HGB area to insure that the emission reduction targets are met.

For the rest of the enforceable commitments to adopt and submit rules to achieve the remaining 42 tpd NO_X reductions due by May 1, 2004, Texas determined that these additional NO_X reductions would not be necessary for the area to attain. Instead, as discussed elsewhere in this document and the proposed approval notice (70 FR 58119), TCEQ has instead adopted and has begun implementing a strategy to reduce emissions of HRVOCs. EPA believes that the new strategy will attain the one-hour standard. This is further discussed in other sections of this notice, the proposal notice, and the TSD.

Commitment: That the rules will be adopted as expeditiously as practicable and the compliance dates will be expeditious.

Discussion: TCEQ adopted its measures for the control of HRVOC first in 2002 and has revised them three times since then. The compliance dates in the rules are based on the need to develop monitoring plans, quality assurance/quality control programs, install the monitors, and develop control plans based on the monitoring results. EPA believes that the implementation of these new measures is as expeditious as practicable.

Commitment: That the State would concurrently revise the Motor Vehicle Emissions Budgets (MVEBs) and submit as a revision to the attainment SIP if additional control measures reduce on-road motor vehicle emissions. Texas stated that measures which could limit future highway construction, such as growth restrictions, may not be included.

Discussion: Texas has revised the mobile source budget to account for TERP reductions and other adjustments to the mobile source emissions estimates.

Summary: Based on the above analysis, we have determined that TCEQ has satisfied the requirements of the enforceable commitments contained in the approved Houston/Galveston SIP.

G. Motor Vehicle Emissions Budgets

The MVEBs established by this plan and that EPA is approving are contained in Table 2. The development of the MVEBs are discussed in section 3.5 of the SIP and were reviewed in the TSD. We are approving the new MVEB because we find the budget to be consistent with the attainment plan.

TABLE 2.—2007 ATTAINMENT YEAR MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day]

Pollutant	2007
VOC	89.99
NO_X	186.13

III. What Is EPA's Response to Comments Received on the October 5, 2005 Proposed Rulemaking for This Action?

A. What Comments Were Received?

The following comment letters were received on the October 5, 2005 proposal:

(1) November 4, 2005 letter from John D. Wilson, Executive Director of Galveston-Houston Association for Smog Prevention for the Galveston-Houston Association for Smog Prevention, Environmental Defense (Texas Office), Lone Star Chapter of the Sierra Club, and Public Citizen (Texas Office). Comments from this group will be referred to as "(Wilson)".

(2) November 4, 2005 letter from Matthew L. Kuryla of Baker Botts LLP on behalf of BCCA Appeal Group. Comments from this group will be referred to as "commenter (BCCAAG)". Commenter BCCAAG included a list of BCCA Appeal Group members as follows: Air Products, L.P.; Dynegy, Inc.; Entergy Gulf States, Inc.; Enterprise Products Operating, L.P.; Exxon Mobil Corporation; Greater Fort Bend Economic Development Council; Lyondell Chemical Company; Reliant Energy, Inc.; Shell Oil Company; Texas Genco; Texas Instruments Incorporated; Texas Petrochemicals, L.P.; and Valero Refining-Texas, L.P.

B. Response to Comments on Attainment Demonstration

In general the commenter (BCCAAG) indicated that they support approval of the proposed attainment demonstration revisions and did not have any adverse comments on this SIP revision. They indicated that the revisions represent the most effective, technically and scientifically robust plan yet advanced for achieving air quality goals in the HGB airshed and the revised control strategy will bring the area into attainment. They continued by indicating that the revised plan is already reducing the number of days that ozone exceedances occur and the magnitude of the high and second high ozone value at regulatory monitors has decreased substantially in the last three years. Commenter (BCCAAG) supported the proposed approval indicating that the revised plan did meet RACM and the revised control strategy would reach attainment.

1. General Comments

Comment GC1: A commenter (Wilson) indicated that the proposed plan fails to adequately demonstrate that its implementation, maintenance, and enforcement will lead to attainment of

the 1-hour national air ambient quality standards (NAAQS) for ozone in the Houston-Galveston-Brazoria (HGB) area. State ambient monitoring results show that the HGB area already has failed the test for attainment of the 1-hour ozone standard by the statutory deadline of November 15, 2007, further demonstrating that the SIP revision is "substantially inadequate to attain" the ozone NAAQS by the deadline established in the Clean Air Act (CAA). Thus, as demonstrated in these comments, the EPA Administrator must find that:

- Texas has failed to satisfy the minimum criteria under section 110(k);[1] and
- The plan is substantially inadequate.

Then, based on these findings, the Administrator must require that the TCEQ submit a revised plan demonstrating attainment within no more than 18 months.[2]

Commenter (Wilson) also urged EPA to disapprove the attainment plan because they believe the plan does not include complete modeling, enforceable versions of all Reasonably Available Control Measures (RACM) and a control strategy sufficient to achieve attainment. The commenter (Wilson) went on to say because they believe the plan should be disapproved, EPA must commence promulgation of a Federal Implementation Plan (FIP).

Response GC1: In the following responses, we address the specific concerns raised by the adverse comments in more detail. We believe the revised plan provided by the State of Texas is fully approvable under the Act, as we have documented in this notice and will provide for attainment as expeditiously as practicable which is by November 15, 2007, and that the revised plan includes all reasonably available control measures. Therefore, we are finalizing our approval in this action. Furthermore, because we are fully approving the plan as meeting the requirements of 182(c)(2) and (d) of the Act, it is unnecessary to commence development of a FIP.

Comment GC2: Commenter (Wilson) indicated TCEQ has not provided modeling that shows attainment by 2007. The commenter also indicated that six monitors in the area have already had four to six exceedances of the 1-hour ozone NAAQS and the area has already failed to attain by November 17, 2007 based on monitoring data for 2005. The commenter also contended that two one-year extensions are specifically restricted to the dates listed in Table 1 of Section 7511(a)(1), and that they do not apply to the Severe-17 area deadlines set in Section 7511(a)(2). Therefore, the commenter argues, these extensions cannot change the attainment date of Severe-17 areas such as Houston. The commenter also states that there is no demonstration of maintenance of the ozone standard below the 0.12 ppm one-hour standard beyond 2007.

Response GC2: EPA has taken the position that for nonattainment areas subject to the requirements of subpart 2 of Part D of the Act, the area needs to demonstrate that in the attainment year, the area will have air quality such that the area could be eligible for the two one-year extensions provided under Section 181(a)(5) of the Act. See 66 FR 57160, 57163–64 (November 14, 2001). EPA disagrees that Severe-17 areas such as Houston are not entitled to the extensions provided in Section181(a)(5). It is our interpretation that the Severe category in Table 1 of Section 181(a)(1) encompasses both Severe-17 and Severe-15 areas. Table 1 sets an attainment date of 15 years for severe areas with a 1988 ozone design value between .180 and .280 ppm. However, Section 181(a)(2) of the Act modifies Table 1 to provide an attainment date of 17 years for severe areas with a design value of between .190 and .280 ("Severe-17 areas"). For those areas with a design value above .190, Congress plainly intended to allow two years longer to attain than the remainder of the severe areas included in Table 1. Table 1 in Section 181(a)(1) cannot be read in isolation, and must be read in conjunction with Section 181(a)(2). EPA thus interprets Section 181(a)(5) as providing for attainment date extensions for all severe areas, including those whose attainment date in Table 1 is modified by Section 181(a)(2).

EPA interprets Section 181(a)(2) as simply recognizing that Severe areas with a higher design value will need additional time to reach attainment and thus is simply extending the date in Table 1 for severe areas with high design values. There is nothing in Section 181 that directly excludes Severe-17 areas from the extensions provided for in Section181(a)(5). The commenter seems to suggest that even though Congress recognized that Severe-17 areas would need more time to reach attainment, they are not entitled to the extensions in Section 181(a)(5). This interpretation would result in the Severe-17 areas getting no more time to attain than Severe-15 areas that potentially could qualify for the two one-year extensions. This would be an absurd result. Under the commenter's interpretation, all areas, including those designated "Extreme", would be entitled to attainment date extensions, with the sole exception of Severe-17 areas. This would mean that severe areas with design values under .190 would be allowed two one-year extensions, providing them with an attainment period of up to 17 years, while the Severe-17 areas, which were intended to have two years longer to attain than the other severe areas, would be held to their initial 17-year attainment period, thereby eliminating the very distinction between the areas that Congress intended in section 181(a)(2). The better reading is that Severe-17 areas should be eligible for the 2 one-year extensions (if they qualify for them) provided for in Section181(a)(5). EPA has consistently taken this position. Indeed, in the approval of the full attainment demonstration SIP for the Houston area in our November 14, 2001 (66 CFR 57160, 57163), we indicated in a response to a comment (that the modeling should show attainment in 2005) that EPA's modeling guidance provided for modeling to demonstrate attainment in the last year (2007 in this case) such that it would be eligible or clean data extensions in accordance with Section 181(a)(5). It has been EPA's opinion at least since 2001 that Houston, a Severe-17 area, was entitled to the extensions in question. If the commenter's interpretation was applied (interpret 181(a)(5) as not applying to Severe-17 areas), three years of data (2005–7) would be needed to yield attainment in 2007 and to yield those monitor levels, EPA would have had to modify modeling guidance and required TCEQ to model 2005 future year for Houston and show no exceedances in the SIP revisions EPA approved in 2001. Once again, if the commenter's assertion were correct, Severe-17 areas would not be eligible for clean data extensions with the end result being an attainment date not much different than if the area had been designated a Severe-15 area.

In addition, under EPA's interpretation, a Severe-17 area does not automatically get the extensions. They have to demonstrate significant progress towards attainment. Nonattainment areas subject to the requirements of subpart 2 of part D of the Act, need to demonstrate that in the attainment year, the area will have air quality such that the area could be eligible for the two one-year extensions provided under section 181(a)(5) of the Act. Under section 181(a)(5), an area that does not have three years of data demonstrating

[1] 42 U.S.C. 7509(a)(1) and (2).

[2] 42 U.S.C. 110(k)(5).

attainment of the ozone NAAQS, but has complied with all of the statutory requirements and that has no more than one exceedance of the NAAQS in the attainment year, may receive a one-year extension of its attainment date. Assuming those conditions are met the following year, the area may receive an additional one-year extension. If the area has no more than one exceedance in this final extension year, then it will have three-years of data indicating that it has attained the ozone NAAQS. There is no reason to believe that Congress did not intend for Severe-17 areas to exercise this option.

Moreover, EPA believes this approach is consistent with the statutory structure of subpart 2. Under subpart 2, many of the planning obligations for areas were not required to be implemented until the attainment year. Thus, Congress did not assume that all measures needed to attain the standard would be implemented three years prior to the area's attainment date. For example, areas classified as marginal—which had an attainment date of three years following enactment of the 1990 Clean Air Act Amendments—were required to adopt and implement RACT and I/M "fix-ups" that clearly could not be implemented three years prior to their attainment date. Similarly, moderate areas were required to implement RACT by May 1995, only 18 months prior to their attainment date of November 1996. Also, the ROP requirement for moderate and above areas, including the 15% plan for reductions by November 1996, applies through the attainment year. Thus, EPA believes that Congress did not intend that these additional mandatory reductions be in excess of what is needed to achieve three years of "clean data." EPA does not require areas to demonstrate that the area will have three years of data (2005–2007) showing attainment in the attainment year. However, EPA does believe that the Act requires and that it is prudent for States to implement controls as expeditiously as practicable. As discussed elsewhere in this notice, additional reductions are being made in the Houston area after the 2005 ozone season, so it is still possible for the additional measures to result in the area reaching attainment by 2007. For these reasons, EPA does not agree with the commenter that the State's attainment demonstration is inadequate because of the exceedances that occurred at six monitors in 2005.

A plan for maintenance of the NAAQS is not necessary for the attainment demonstration to be approved. A State is not required by the Act to provide a maintenance plan until the State petitions for an area to be redesignated to attainment. While it is not necessary for the State to provide for maintenance of the standard at this time, we do believe emissions in the HGB area will continue to decrease after 2007 due to on- and off-road vehicle emission control programs that will provide additional reductions as the fleet continues to turnover after 2007. TCEQ is also required to provide an 8-hour ozone attainment SIP for the HGB area that will likely require a new mixture of control measures to demonstrate future attainment of the 8-hour ozone standard. So there is reason to believe that air quality will continue to improve after the 1-hour attainment date.

Comment GC3: Commenter (Wilson) suggested the plan should address other air pollution concerns such as reasonable further progress of the 8-hour standard in addition to attainment of the one-hour standard. The commenter suggested the plan should provide as much progress as possible toward implementing the 8-hour standard as the requirements of the Act and EPA's implementing regulations allow.

Response GC3: EPA established submission dates for 8-hour SIPS in its Phase 2 ozone implementation rule (70 FR 71611). SIPs addressing reasonable further progress and attainment of the 8-hour standard are due in 2007 and are not the subject of this rulemaking. EPA's review here is focused on whether the submitted plan meets the statutory requirements for attainment of the one-hour ozone standard, and doesn't interfere with attainment of the 8-hour NAAQS. In reviewing the 1-hour attainment SIP, EPA did consider consistent with section 110(l) whether this SIP revision would interfere with attainment of the 8-hour NAAQS. Section 110(l) requires that any plan revision not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act 42 U.S. C. § 7410(l). As provided in Section II.E, EPA concludes that these revisions will not interfere with attainment or progress toward attainment of the 8-hour ozone NAAQS.

Comment GC4: The commenter (Wilson) indicated the EPA should reject the TCEQ claim that the SIP revision is likely to lead to attainment because it is based on a model analysis that is systematically biased towards under predicting unhealthy levels of ozone, both in the base case and future conditions. The commenter continues that TCEQ wrongly claims the only significant reason for this under prediction is the under reporting of short-term emissions by industry and that other factors exist for the under prediction bias. The commenter continues that because the TCEQ did not recognize the other factors that lead to the under prediction bias in their model, that the plan being considered by EPA lacks remedies for each of these factors. The commenter gives the example that TCEQ did not adopt measures to regulate VOCs other than HRVOCs and that TCEQ even repealed some general VOC control measures even though evidence suggests that Other VOCs (OVOCs) are a factor in the under prediction bias. The commenter summarizes that since such additional control measures are lacking, that EPA should disapprove the revisions.

Response GC4: While EPA agrees that a general under prediction bias exists in the base case and future year modeling, we disagree that this is grounds for disapproving the revisions. EPA believes all model performance measures should be considered and there is no rigid criterion for model acceptance or rejection in assessing model simulation results for the performance evaluation. As recommended by EPA, the State's model performance evaluations for the selected episode included diagnostic and sensitivity analyses, and graphical and statistical performance measures. The model performance evaluation included statistical measures consisting of comparing the modeled versus monitored ozone that were mostly within the suggested limits in EPA's guidance. In addition, the graphical performance of the model for the episode indicated the model performed fairly well. For all days modeled, the combination of statistical and graphical performance was deemed sufficient for this revision package.

Sufficient evidence exists that the episodic emissions that occur in the Houston area do impact the model's capacity to replicate ozone and are a plausible reason for much, if not all of the ozone under prediction in the model. While some evidence exists that an under estimation of emissions of Other VOCs (OVOCs = VOCs other than HRVOCs) may exist and that this may be responsible for some modeling under prediction, the research to answer the level of under/over estimation of OVOCs and how to allocate such adjustment in the model were not available when TCEQ was conducting the modeling for these revisions. Furthermore, modeling analyses indicate that HRVOC emission releases (in addition to the normal inventory) could result in higher ozone levels that would be as high as monitored values

and would seem to resolve much of the modeling under prediction bias issues. While an under estimation of OVOCs may also be part of the reason for the under prediction bias in the model, sufficient analyses/evidence do not exist to specifically quantify any level of bias due to wrongful estimation of OVOCs. While TCEQ did not implement additional controls on OVOCs, it is EPA's technical opinion that based on the weight-of-evidence and the modeling, the State's revised control strategy provides for attainment by November 15, 2007.

Comment GC5: The commenter (Wilson) indicated that the plan is not likely to lead to attainment because several of the control strategies are not likely to be as effective as TCEQ claims. The commenter continues that EPA should not approve some of the control strategy revisions (relaxation of NO_X controls) in order to maintain a higher level of pollution control in the Houston area. In other parts of the commenter's package, the commenter indicated that the NO_X rule revisions should not be approved.

Response GC5: It is EPA's technical opinion that based on the modeling results and the additional weight-of-evidence, the State's revised control strategy provides for attainment of the 1-hour ozone NAAQS by November 15, 2007. We have addressed other specific comments from the commenter on issues related to why the control strategies may not be as effective as TCEQ claims elsewhere in the response to comments. The Clean Air Act gives the State the primary authority to prepare a SIP that provides for implementation, maintenance and enforcement of the NAAQS in each air quality control region and to determine the mix of control measures to achieve that goal, as long as they show attainment and the demonstration meets 110(l) requirements. EPA's responsibility is to review SIPs that the State provides and either approve or disapprove the revisions based on their meeting the requirements of the Act. EPA has reviewed the revised SIP and has determined that the revisions (including the NO_X rule revisions) demonstrate attainment by November 15, 2007.

Comment GC6: The commenter (Wilson) indicates that although the TCEQ has exercised sound scientific judgment in responding to many issues that have arisen, the SIP revision is also characterized by a pattern of avoiding unwanted findings by withholding data, applying standards selectively, reaching inconsistent conclusions, failing to conduct critical research, and unreasonably dismissing comments. The commenter continues that these actions undermine the technical credibility of the SIP revision and prejudice its findings. The commenter indicates that EPA should conduct its own analysis of available data and apply a health-protective bias whenever more than one argument is supported by the available data.

Response GC6: EPA is satisfied with the technical credibility of TCEQ's finding. As discussed in the response to comment GC5, TCEQ is responsible for developing an acceptable implementation plan. TCEQ continues to have an open stakeholder process (both periodic technical and planning meetings and special meetings). EPA encourages TCEQ to continue having an open stakeholder process and to continue to share as much information (analyses, modeling, proposed regulations, etc.) as possible with the public/stakeholders and allow for comments/feedback to be considered in the SIP development process. EPA conducted a detailed review of the proposed revisions prior to proposing approval and provided detailed review of the modeling and weight-of-evidence analysis in the proposal and TSD. EPA has also considered the comments received during the proposal's comment period and has determined that the SIP revisions are acceptable and EPA is approving these revisions to TCEQ's SIP.

Comment GC7: A commenter (Wilson) indicated that TCEQ has failed to include contingency measures in the HGB ozone SIP. The commenter continues that TCEQ has claimed they satisfy this requirement with the measures to be implemented in 2008, since the measures are above and beyond those modeled in the proposed revision and include additional TERP reductions. The commenter contends that these measures are not sufficient because TCEQ has not substantiated how they are sufficient to advance attainment.

Response GC7: TCEQ included contingency measures in the SIP revision for 23.57 tpd reduction in NO_X and 10.84 tpd of VOC in 2008. EPA has reviewed the proposed contingency measures and concluded that they meet the level of reductions necessary. Historically, EPA has recommended that contingency measures achieve an additional 3 percent reduction in emissions. (57 FR 13511) The purpose of contingency measures is to ensure continued progress while the area moves forward to adopt additional controls needed for attainment and we believe an additional 3 percent achieves that purpose. (57 FR 13511) We are uncertain what the commenter is referring to when it suggests that contingency measures must be "sufficient to advance attainment" but note that term is not used in the statute nor has EPA ever suggested that as the test for determining the adequacy of contingency measures. While we find that TCEQ has adequately satisfied the contingency measure requirement, ultimately we note that contingency measures for failing to attain the 1-hour standard will not apply. As noted in the Phase 1 Rule to Implement the 8-hour ozone NAAQS, EPA did not retain 1-hour contingency measures as an applicable requirement that would continue to apply after the 1-hour standard is revoked (*i.e.*, June 15, 2005 for the HGB nonattainment area). EPA also further noted that once the 1-hour standard was revoked, EPA would no longer make determinations whether an area had met or failed to meet that revoked standard and thus contingency measures would not be triggered even if adopted. (70 FR 30592, May 26, 2005 at page 30599.)

Comment GC8: A commenter (Wilson) indicated EPA should not disregard the 1-hour ozone standard in light of the new 8-hour standard. The commenter indicated that an analysis of the historical record demonstrates that if Houston meets the 1-hour standard, the public will be protected from air pollution exposures that would be allowed under the 8-hour standard. The commenter iterated that it is likely to be true that for much of the rest of the country the 8-hour standard can reasonably supplant the 1-hour standard and in Houston the 8-hour standard is clearly superior to the 1-hour standard in terms of public health benefits. The commenter continued that the 1-hour standard has a special role in Houston for the protection of public health. The commenter indicated that TCEQ data suggest that failing to attain the 1-hour standard will leave Houston residents with exposure to ozone at levels that the EPA once sought to prevent. According to the commenter's analysis of days when either the 1-hour and/or the 8-hour standard were exceeded during 2000–2003, the one-hour standard was the only standard breached on about 7 percent of the days (approximately 6 days/year). The commenter also indicated the AQI reaches a higher value based on the one-hour standard on a similar number of days. The commenter continued by indicating a singular focus on the 8-hour standard (and not addressing the 1-hour standard) could leave Houston residents

breathing unhealthy air about 6 days per year even after the 8-hour standard is attained.

The commenter continued that controlling short-term exposures to ozone is important as many scientific studies based on the 1-hour ozone standard report increased use of asthma medication, increased emergency room visits and hospitalization for respiratory problems, even at levels below 0.12 ppm for just one or two hours with affects continuing for days or months afterwards.

The commenter continues that EPA has always viewed the 1-hour and 8-hour standards as adequate alternative methods for protecting public health, and gave consideration to establishing a standard that combined both 1-hour and 8-hour measurements. The commenter indicates the basis for revoking the 1-hour ozone standard dates back to a 1996 report (EPA, Review of National Ambient Air Quality Standards for Ozone: Assessment of Scientific and Technical Information, June 1996) issued by EPA staff that concluded from a public health perspective, a 1-hour, an 8-hour or a combined standard could be set at a level that would adequately protect public health. The commenter continues that the report did not explicitly reject a combination of the 1-hour and 8-hour standards, but did firmly endorse an 8-hour standard. The commenter indicates the record isn't entirely clear as to why a combined standard was not the initial recommendation of staff in the report, but it seems to turn on the word "efficient."

The commenter continues that EPA concluded later that year in a report (US EPA, "Responses to Significant Comments on the 1996 Proposed Rule on the National Ambient Air Quality Standards for Ozone"; December 13, 1996), based on modeling of ozone exposures, "that an 8-hour 0.08 ppm averaging time does effectively limit both 1- and 8-hour exposures of concern. The commenter continues that subsequent EPA decisions recognize that the 8-hour standard might not effectively protect the public from 1-hour health effects, and sought to retain the 1-hour ozone standard until attainment, and then revoke it on an area-by-area basis. The commenter indicates that this would have been consistent with full protection of public health and administrative efficiency.

The commenter continued that the EPA decided for legal reasons to go ahead and revoke the 1-hour standard nationwide while California's current review of its state ozone standards is likely to lead to a 1-hour standard of 0.09 ppm, compared to the current 0.12 ppm standard used by EPA.

The commenter concluded if the plan EPA proposes to approve fails, Houston could still have serious public health effects due to ozone smog even if the TCEQ leads Houston to attainment of the 8-hour standard.

Response GC8: As we noted in the final Phase 1 Rule, we determined in the 1997 NAAQS rulemaking (69 FR 23951) that we did not need to retain the 1-hour standard to protect public health. Thus, in the 1997 NAAQS rulemaking, EPA concluded that the 8-hour standard would replace the 1-hour standard. The issue of whether the 1-hour standard is needed to protect public health has not been reopened here and, indeed, should be considered only in the context of a national rulemaking reviewing the NAAQS.

2. Comments on the Photochemical Modeling

Comment M1: Commenter (Wilson) comments that EPA modeling guidance (1996) indicates that weight of evidence analysis included to supplement the deterministic and statistical modeling attainment demonstrations needs to be compelling to overcome the results from the photochemical grid model. The commenter continues to cite EPA guidance indicating that "If the results of corroborative analyses are also consistent with the conclusion that a strategy will be insufficient to meet the NAAQS by the statutory date, attainment would not be demonstrated." The commenter continues that the SIP revision does not meet EPA guidance for demonstrating attainment because: (1) The plan fails the deterministic test as indicated by the use of weight of evidence (WOE) to justify dropping the August 31 from the modeling episode. (2) The databases, in particular emission inventories, used in the modeling have a number of problems including the failure of TCEQ to reconcile their own findings about the under-reporting of other VOCs. The analysis and WOE exhibit a selective approach to the examination of relevant data that distorts the WOE guidance and results in relaxation of WOE requirements. (3) The episode days used to evaluate the control strategy do not include days with observations near, but slightly above, the design value and meteorological ozone forming potential likely to be exceeded about once per year as advised by EPA guidance. (4) The TCEQ's corroborative analyses are also consistent with the conclusion that the strategy is insufficient to demonstrate attainment.

The commenter summarizes that a thorough and skeptical consideration of TCEQ's technical analysis must result in the EPA finding that the SIP revision does not demonstrate attainment of the 1-hour ozone standard. The commenter continues to indicate: (1) The modeling has a systematic ozone underprediction bias at levels above 120 ppb. (2) TCEQ's attainment demonstration has failed to address this shortcoming in the WOE and the plan does not include control measures to adequately control emissions on "level purple" ozone days that are representative of the region's design value. (3) The control measures included in the plan are inadequate to meet even the expectations of the TCEQ. The commenter then indicates that EPA should not approve the SIP revision, and instead find that TCEQ has failed to submit a plan providing for implementation, maintenance, and enforcement of the ozone NAAQS for the HGB area.

Response M1: As also discussed in other responses, EPA did not dismiss any measures or analyses used by TCEQ for their model performance evaluation, nor did EPA disagree with TCEQ's conclusion, based on the modeling and in conjunction with the WOE analyses, that this SIP revision should result in the HGB area attaining the 1-hour ozone standard by November 15, 2007. EPA's analysis included evaluating model performance and model reaction on the August 31st episode day in conjunction with the additional WOE materials that TCEQ provided for this day, as well as the rest of the attainment demonstration period. The commenter raised a number of specific issues that are addressed in this comment or more specifically addressed in separate comments, but the combination of the comments do not sway EPA's technical opinion that the modeling and the combined Design Value (DV) approach predicts the area will reach attainment by the end of 2007.

EPA also reviewed modeling sensitivities conducted by TCEQ including rough adjustments to OVOCs, but concurred with TCEQ that the body of supporting material to conduct a refined adjustment for OVOCs did not currently exist. EPA encourages TCEQ to continue to research this issue to address this uncertainty in the future and further address this issue in the 8-hour ozone SIP. EPA believes that most of the error can be best explained by uncertainties in the amount of HRVOC that were actually emitted and the spatial allocation of the HRVOC adjustment and meteorological model issues. TCEQ chose an average value for the adjustment factor for the HRVOCs

and adjusted the same level over the entire Houston/Galveston/Brazoria area, even though field study data indicates that a range existed that was many times higher than the value utilized in TCEQ's modeling in some cases. The TCEQ and EPA agree that there is simply not enough data available at this time to precisely locate all of the sources of non-inventoried HRVOC emissions. The TCEQ is pursuing several areas of research that will use additional monitoring data and other data to improve the spatial and temporal allocation of HRVOC emissions, and is simultaneously pursuing bottom-up methods to improve emissions inventories. These efforts will allow a much more refined treatment of "extra" hydrocarbon emissions in future modeling. TCEQ should continue to strive to yield better estimates in HRVOC and OVOC emissions from industrial facilities in HGB and this should continue to be one of the focus areas for the second TEXAQS study in 2005–2006. EPA agrees that TCEQ made an appropriate estimate of how the emission inventory for HRVOCs should be adjusted without sufficient data to conduct a higher level of adjustment with spatial variability. TCEQ tried to gather more data through a special inventory request of over 80 industrial facilities in the HGB area, but was not able to collect all of the data required to conduct a more accurate HRVOC adjustment. We believe our understanding of the process is sufficient, however, to interpret the photochemical model results and determine that this SIP revision is approvable.

EPA previously reviewed and agreed that the episode (8/21–9/6/2000) was appropriate for this SIP revision. The episode did include several days (8/25, 8/30, 8/31, and 9/5) that included surface level monitored data greater than 175 ppb and several days near the area's design value at the time of the episode and the episode did have the benefit of intensive data collected during this period. Given the historical difficulty with obtaining acceptable photochemical model performance in the HGB area, EPA recognizes the importance of selecting days from a field study period in preference to other non-field study days. On these high ozone level days (>175 ppb) the commenter is correct that the model had an under prediction bias of the domain peak and at many monitors (values above 120 ppb). But this is thought to be largely the result of many issues (HRVOC adjustments and the two-pronged design value approach, meteorological issues, general modeling issues, etc.) discussed above and in other responses, but was determined acceptable in this SIP revision due to the inclusion of HRVOC rules that will remove much of the variability in HRVOC emissions and result in significantly lower HRVOC emission levels. It should also be noted that on these four high ozone level days (>175 ppb monitored), EPA's three primary ozone statistic metrics were within EPA guidance parameter for all four days (including the August 31st) with the exception of the Peak Prediction accuracy metric on the August 30th (see TSD Tables G.1–1 to G.1–3 and Texas SIP materials for details).

The need for further studies does not mean, however, that the modeling relied upon today was unable to estimate the amount and type of emission reductions needed for attainment. EPA believes because the diagnostic/sensitivity tests do not reveal serious flaws in model formulations and the model generally predicts the right magnitude of the peak which is confirmed by the statistical measures and graphical analysis, that the model does provide an acceptable tool for estimating the amount of emissions reductions needed. It is EPA's technical opinion that based on the modeling and the weight-of-evidence, the State's control strategy should provide for attainment by November 15, 2007.

TCEQ and others have provided significant amounts of modeling sensitivities, monitoring analyses, etc. as part of the corroborative analyses that were evaluated in the decision to propose approval of the SIP revisions. While some components of the corroborative analysis seem to indicate that the SIP revision plan may not succeed, a majority of the components indicate that the plan will succeed. EPA has weighed many different analyses from TCEQ and others (including the HARC H12 and H13 project results) and concluded that the SIP revision plan will attain by the attainment date. TCEQ has agreed to conduct further refinements to the emission inventory and meteorology of this episode in development of the 8-hour ozone SIP. TCEQ and others are also conducting another field study in 2005 and 2006. TCEQ has indicated that they will attempt to weigh any new information derived from the further studies and evaluations, and incorporate the information into the HGB 8-hour Ozone SIP to be submitted to EPA by June 15, 2007.

Comment M2: The commenter (Wilson) commented that they are concerned with final episode selection and with the modeling results for that episode. The commenter continued by conjecturing that the episode included in the modeling does not contain enough days with observations near, but slightly above, the design value and with meteorological ozone forming potential that is likely to be exceeded about once per year as is advised by EPA guidance. The commenter also indicated that the SIP revision adequately addresses Air Quality Index (AQI) level "Orange" ozone days and not "Purple" level ozone days when the HGB area has a AQI level "Purple" ozone problem.

The commenter continued, the 2003 design value for the 1-hour ozone standard was 0.175 ppm and for the period 2000–2003, air pollution monitors recorded an average of 9 days per year with a 1-hour ozone measurement over 0.165 ppm, and about 1 additional day per year measured over 0.205 ppm. The commenter summarized this data as on average during the HGB area has 10 AQI level "Red" and "Purple" days per year during the 2000–2003 period.

The commenter also indicated that according to ground-level monitoring data used by the TCEQ in its plan, the episode used for control strategy evaluation in the proposed SIP does not provide ozone formation conditions that are close to the region's design value, and that it does not resemble the character of the region's serious ozone problems. The commenter provided a graph to illustrate that the plan's best effect is shown by reducing several AQI level "Orange" days near the 1-hour ozone standard of 0.12 ppm, but no AQI level "Red" or level "Purple" days. The commenter also indicated that aircraft data and Williams tower data did include higher AQI levels of "Red" and "Purple" in some of the areas that do not have ground monitoring stations with the caveat that some of this data was of shorter duration period.

The commenter continued that: "The TCEQ estimates the effect of the undocumented emission releases by calculating an alternative design value of 144 ppb for comparison to the actual design value of 182 ppb for the 1999–2001 period." The commenter further indicated that another perspective is suggested by comparing the model variability in peak ozone to actual variability and concludes that routine variability on days conducive to ozone formation is limited to only about 20 ppb, compared to about 75 ppb of actual variability in ozone formation observed at ground monitors. The commenter concludes that regardless of whether one concludes that 38 ppb (182 ppb–144

ppb) or 55 ppb (75 ppb–20 ppb) of peak ozone formation are not properly modeled, the challenge to the weight-of-evidence analysis is clearly substantial.

Response M2: The original episode selection of August 19-September 6, 2000 was selected by TCEQ with EPA review and comment on the selection of the episode. This TexAQS 2000 episode was selected because it includes a 19-day window with both weekday and weekend events, a suite of wind directions, and daily ozone peaks measured in several different areas of the city reflecting the net surface transport during each day. When combined with the additional meteorological and precursor data collected during the TexAQS 2000 study period, this extended ozone episode includes a better than normal monitored data set and a fairly representative mix of HGB area episode types. Given the historical difficulty with obtaining acceptable photochemical model performance in the HGB area, EPA recognized (as allowed by EPA modeling guidance) the importance of selecting days from a field study period in preference to other non-field study days during the episode selection process with TCEQ. EPA's modeling guidance for the 1-hour ozone NAAQS ("GUIDELINE FOR REGULATORY APPLICATION OF THE URBAN AIRSHED MODEL"; U.S. EPA; July 1991; pg. 11) includes the following text:

> In choosing from among the top-ranked episode days, consider the availability and quality of air quality and meteorological data bases, the availability of supporting regional modeling analyses, the number of monitors recording daily maximum ozone concentrations greater than 0.12 ppm (i.e., pervasiveness), number of hours for which ozone in excess of 0.12 ppm is observed, frequency with which the observed meteorological conditions correspond with observed exceedances, and model performance (discussed in Chapter 5). For example, the top-ranked episode day within a meteorological regime may have only routine air quality and meteorological data bases available for use in the modeling. The third-highest day, however, may have occurred during an intensive field study, so that a more comprehensive data base is available. Thus, the third-highest day may be more desirable for modeling than the top-ranked day.

As EPA's guidance indicates, days with not quite as high ozone exceedances may be chosen over the highest ozone day if they occurred during an intensive field study. Given the difficulties and uncertainties with modeling the Houston area, EPA approved the selection of the field study period as the episode period to be modeled in accordance with EPA's guidance. It should be noted that the 1-hour ozone design value is calculated for each monitor in the domain and is the 4th highest 1-hour ozone value in a three year period (see EPA's memo titled "Ozone and Carbon Monoxide Design Value Calculations"; June 18, 1990). Therefore the design value for the area is usually lower than the 1st high value as the commenter indicated, and for the limited time period (2000–2003) that the commenter analyzed, the HGB area design value was not a "Purple" level AQI day, but a mid "Red" level AQI day.

Based on model performance issues, the original episode was reduced to August 25, 26, August 29–September 4, and September 6, 2000. As TCEQ identified in their response to comments, it is important to note that six 1-hour ozone exceedance days were included in the ten day modeling period (August 25–September 1), and the average of those peaks was 168.3 ppb. This modeled period of the episode did include several days (8/25, 8/30, 8/31, and 9/5) that included surface level monitored data greater than 175 ppb and several days near the area's design value at the time of the episode and the episode did have the benefit of intensive data collection that occurred during this period. The September 5th day was dropped due to model performance issues. On these high ozone level days (>175 ppb) the commenter is correct that the model had an under prediction bias of the domain peak and at many monitors (values above 120 ppb), but this is thought to be largely the result of many issues (HRVOC adjustments and the two-pronged alternative design value approach, meteorological issues, general modeling issues, etc.). As discussed in other responses, the modeling was determined to have an acceptable model performance. Even with an under-prediction bias, six of the Base 5b episode days had values greater than 150 ppb in the basecase modeling which is higher than the Alternate Design Value (ADV) of 144 ppb that TCEQ used (and 7 days above 144 ppb, see TSD Table H–3). In evaluating the TSD tables, the modeling episode included three monitored "Red" AQI level days, with two of the days near "Purple" levels (8/25 and 8/30). With the combined strategy of reducing emission events and routine emissions, EPA would not expect the basecase modeling (utilizing a routine emission approach) to include ozone levels above the design value. Furthermore, TCEQ did include many days that were above the 144 ppb ADV that they used and thus we weighted this fact as a conservative WOE element. We also concurred with the selection of this episode and that it included enough high ozone value days with values near the design value to be the basis for attainment demonstration modeling.

Comment M3: Commenter (Wilson) comments that the episode used for control strategy evaluation in the proposed SIP does not provide ozone formation conditions that are close to the region's design value, and do not resemble the character of the region's ozone problems with the under prediction of the peaks and the modeled peak 1-hour ozone levels only varying approximately 20 ppb for each day between the base and future attainment demonstration modeling. The commenter then continues that TCEQ's response is the under prediction of the peaks is likely due to unreported or under-reported releases of HRVOCs and that EPA concurred in this assessment of the model performance with citations from EPA's Technical Support Document. The commenter continues that TCEQ estimated the effects of undocumented releases by estimating an Alternative Design Value (ADV) of 144 ppb compared to the actual design value of 182 ppb for the 1999–2001 period. The commenter then discusses an alternate approach to an ADV based on the routine variability of only 20 ppb in the modeling. The commenter summarizes that the two approaches yield either a 38 ppb or a 55 ppb level of peak ozone that is not modeled properly and that the challenge to the WOE is substantial.

The commenter continued that EPA properly expressed some skepticism that under-reported, short-term emission releases should explain the entire under-prediction of peak ozone levels, with a cite from EPA's TSD. The commenter concludes that EPA should further conclude that several other factors are equally likely causes of the under-prediction of ozone peaks by model analysis: Failure to use superfine grid, under-reporting of OVOCs (both routine and short-term), and underestimation of emissions from ports and heavy duty diesel trucks. The commenter also indicated that the drop in ozone design values over the last several years is due to the implementation of NO_X RACT and favorable meteorology.

Another commenter (BCCAAG) commented in favor of the ADV approach and the ADV value of 144 ppb as utilized by TCEQ. The commenter continued that the strength of TCEQ's WOE demonstration is bourne out by the recent decreases in ozone values

(Design values, # of days of exceedances, # of 1st and 2nd High values) in HGB. The commenter continues that this occurred despite an increase in ozone monitors and economic growth in the region.

Response M3: As previously discussed in the response on M2, EPA concurred that this was a reasonable episode for this SIP revision and that it included enough days with high ozone levels. The commenter is correct in indicating that for most days the modeled change between base and 2007 future controlled level is less than the difference between the daily monitored peak and 124 ppb, but the daily difference value ranges from 14.7–37.6 ppb with an average of approximately 27.5 ppb (not 20 ppb). EPA conducted further analysis of TSD tables G.1–2 and G.1–3 in preparing response to this comment. The original episode had 19 days with 13 exceedance days with an average of 1–HR daily maximum ozone of 160 ppb (36 ppb above attainment) and a range of exceedances from 125 to 200 ppb for the exceedance days. This SIP included a shorter period due to model performance issues that included nine exceedances with an average of 159 ppb and a range from 125 to 200 ppb (based on surface measurements).

The commenter lists a number of issues—failure to use superfine grid, under-reporting of OVOCs (both routine and short-term); and underestimation of emissions from ports and heavy duty diesel trucks—that may be part of the reason for the under-prediction bias and did consider these issues in the TSD that was the basis for our proposal. We discuss these specific issues in other responses in this notice, but we believe that these issues, in conjunction with other issues (including under/unreported emissions) that we have discussed in other responses, covers most of the issues that may be causing the under-prediction bias. Specifically, we have concluded that one of the greatest components of uncertainty in the modeling system is the variability and under/unreported emissions issue. The measures included in this revision will help to resolve the level of uncertainty in this area. As noted elsewhere in this document, we have reviewed the model performance, including bias issues, and have determined the modeling demonstration to be acceptable.

Comment M4: Commenter (Wilson) comments that the TCEQ should have developed a robust method of relating one- and five-second interval ozone data collected by moving aircraft to one hour ozone estimates measured by stationary ground monitors so that airborne monitoring data may be used to estimate 1-hour ozone values in areas of the HGB area that are far from ground monitoring stations.

Response M4: EPA agrees that such a methodology would be a useful analytical tool and TCEQ did initiate a study with the Pacific Northwest National Laboratory to discuss and illustrate problems associated with comparing observations from an airborne monitoring platform to results from photochemical model grids (which might be used with ground based monitoring data). Developing such a methodology is a complex issue since the methodology must take into account temporal differences in the data (*i.e.* one second interval for airborne data versus a five minute interval for ground data), spatial differences in the monitors (differences in location and elevation), and environmental differences for the monitoring equipment (temperature, humidity, solar radiation, etc.) and potentially varying levels of sensitivity/accuracy between the different instruments utilized.

Monitors measure concentration at a point in space and in reality, these concentrations can vary significantly over a grid cell or an area. This is true especially for ozone if it is contained in a narrow plume. Inevitably, a grid type model will smooth some natural phenomena because natural conditions are averaged over the volume of each grid cell. For instance, model output represents a volume average, typically 4 km × 4 km by 50 meter column. As a result, reasonable comparisons between model predictions and monitor observations are not expected to match exactly. With reasonable performance, time series typically show similar diurnal cycles but not exact concentration levels. As a result, it is very difficult to obtain a precise equality between modeled concentration and monitored concentration. This is to be expected and does not necessarily call into question the model's utility as a tool to predict the level of emission reductions needed to reach attainment. As stated in previous comments, EPA believes the model provides reasonable predictions of ozone levels as confirmed by comparisons with monitoring data and therefore can provide an acceptable estimate of the amount of emissions reductions needed for attainment.

Comment M5: Commenter (Wilson) commented that aircraft data were excluded from the model performance evaluation. The commenter also commented that the TCEQ should have revised the base case model performance evaluation section to include qualitative evaluation of model performance based on aircraft data, including reconsideration of alternative model approaches that may appear more favorable in light of these data.

The commenter then indicated that TCEQ had performed a comparison of model results to aircraft data, but inadvertently omitted this comparison from Appendix B of TCEQ's proposal. Due to this omission during TCEQ's proposal, the commenter indicates that they have reviewed the TCEQ's analysis and are providing comments on TCEQ's Appendix B analysis.

The commenter then indicates that they calculated a value of 89 percent as the difference between 1-hour and 5-minute peaks at the Deer Park Monitor on October 7, 1999 (30 ppb difference). The commenter's analysis then utilized this 89 percent factor to scale aircraft data to 1-hour ozone values for comparisons on August 25–30, and September 1, 3, 4, and 6th.

The commenter then continued to give specific analyses of aircraft observations to model predictions for each of these days. The commenter utilized the 89 percent factor to indicate that August 25, 30, and September 1st were days that aircraft and surface monitoring data showed levels well above those achieved in the model. The commenter also utilized the 89 percent factor to indicate that aircraft data showed ozone levels above both the surface monitoring data (maximum of 146 ppb) and model performance data (maximum of 151 ppb) for August 29th.

The commenter also utilized the 89 percent factor to conjecture that TCEQ incorrectly assessed that the model over-predicted ozone formation on August 27 and 28 and that the aircraft data suggests that the model does accurately predict ozone levels. The commenter then continued on that the model under-predicts high ozone levels above 120 ppb.

Response M5: TCEQ did include the Appendix B materials in the SIP submitted to EPA and EPA reviewed the Appendix B as part of the review conducted for the proposal notice. Aircraft observations can be useful in assessing model performance, but must be done with care, due to the many issues outlined in Response M4. Due to these technical concerns it is difficult to utilize aircraft data other than in a qualitative/directional sense for comparing aircraft observational data to 4 km hourly grid modeling predictions.

The commenter did not provide the data utilized to calculate the 89 percent conversion value to convert aircraft data into an estimate of 1-hour ozone concentrations. The commenter did indicate that this value was calculated

using only one day of data at one monitor in the HGB area for a day that is not during the modeled episode period and for a day (October 7, 1999) that is not even during the main period of ozone season in the HGB area. No analysis was provided to document that this was a typical day, or a typical data set to estimate the 89 percent conversion factor nor was an effort made to make sure the data sample set for this calculation was appropriate. This 89 percent value seems high from discussion within EPA Region 6 including monitoring staff that typically review the 5-minute data and 1-hour data. Furthermore the commenter has made several assumptions in their analysis that they utilize to support their comment, that actually weakens their analysis. The commenter assumed that 5-minute data is the approximate length of time that is representative of the aircraft data in comparison to a model grid square, although no basis was given. The method does not resolve that an aircraft would be a line sample through a model grid square at an altitude that does not have hourly monitored data and would not be the same sampling as a single monitor (if you could have one at the altitude of the aircraft). The commenter did not adjust for a model that calculates a large volume average versus an aircraft that is a shorter duration line sample through multiple grid cells that may be several hundreds of meters thick for the layer of the model that the aircraft would be flying. Due to all of these issues including the very limited data set that the 89 percent was generated, we have to discount any assessments that utilized the 89 percent factor.

While the commenter is correct that comparing ground observations to modeled values, the model does under-predict ozone concentrations above 120 ppb for some of the days. As discussed in response to comments elsewhere in this notice, this is expected and was fully reviewed and determined to be approvable for this SIP revision.

Comment M6: The commenter (Wilson) indicates that the exclusion of one kilometer resolution modeling is arbitrary and unreasonably biases the results in favor of an attainment finding. The commenter continues by disagreeing with EPA's proposed action and requests that EPA evaluate the one kilometer resolution modeling as useful evidence that the attainment demonstration is insufficient. The commenter argues that the TCEQ has failed to present a compelling technical argument for excluding one kilometer resolution from the base case and control strategy evaluations. The commenter included language from TCEQ emails, that were included in the materials that were reviewed by EPA while developing the proposal and TSD for this action. The commenter asserts that TCEQ made the decision to exclude one kilometer modeling prior to attempting to develop an technical justification for the decision. The commenter indicates that peak ozone levels are often higher for one kilometer modeling, but other model performance statistics are relatively unchanged when the one kilometer modeling output is compared to the four kilometer average of the one kilometer resolution output. The commenter concluded that the one kilometer resolution modeling made attainment demonstration more difficult and therefore EPA should consider that statistics do not degrade and the peak ozone levels are better represented with the one kilometer modeling, that EPA should not approve the demonstration because the one kilometer grid modeling predicts nonattainment on several days for control strategy evaluations.

Response M6: While the commenter asserts that EPA should reconsider our analysis of the appropriateness of the one kilometer resolution modeling, no new information was provided that was not previously considered in our review during the development of the proposal and TSD for this action. We would like to point out that a full model performance analysis (including statistics, graphical plots, and emissions sensitivities) were not provided for the one kilometer resolution modeling by the commenter or in the TCEQ SIP revisions, so that a full model performance analysis could be compared with four kilometer model performance analysis. Without such an analysis, it is difficult to ascertain whether one kilometer resolution modeling is actually better performing (as the commenter claims) than four kilometer resolution modeling or just yielding higher peak ozone values.

As was discussed in the TSD, concerns have been raised by the academic community that while the CAM_x model will give model predictions at 1 km, it has never been fully evaluated for correct performance at this scale in the HGB area and that the uncertainties associated with these concerns may undermine the credibility of the model runs upon which the control strategy was based. Some of the parameters within CAM_x which raised concerns include horizontal and vertical diffusivities and assumptions within CAM_x that apply to the hydrostatic equilibrium of horizontal and vertical transport may begin to break down at a finer grid resolution.

TCEQ indicated in their response to comments that continued evaluation and peer review of these uncertainties is necessary before the model can routinely be applied at a finer resolution to replicate all conditions of ozone formation.

For further discussion of technical concerns with utilizing the one kilometer resolution modeling and EPA's thoughts and review of the issue please see the proposal and TSD for this action.

Comment M7: The commenter (Wilson) comments that while short-term HRVOC emission events are surely a frequent and significant cause of ozone formation in the Houston area, the TCEQ overstates their role. The commenter continues that TCEQ failed to consider specific problems with its data, and then TCEQ made broad statements that are not supported by their analysis. The commenter then indicates that a more rigorous analysis would support a smaller, yet still significant, role in the SIP.

The commenter then commented on a TCEQ analysis of August 30 indicating that it demonstrated an example of how the TCEQ failed to identify weaknesses in its control strategy by inconsistent analysis. The commenter stated that TCEQ suggests that the gap between the modeled peak of 0.137 ppm and the observed peak of 0.200 ppm on August 30 could be explained by the evidence that one or more emission events not accurately represented in the modeling inventory occurred on this day. The commenter continued, that on the other hand, the TCEQ conducted a sensitivity analysis with a hypothetical upset included on August 30, but the model peak only increased to 0.145 ppm. The commenter further indicated that TCEQ minimized the importance of emission events on ozone formation by finding that "emission variability of roughly 1000 lb/hr should be expected in the regions upwind of peak, region wide ozone concentration at least once per year and that releases over approximately a two to three hour period can lead to increases of 2–3 ppb in peak ozone concentration per 1000 lb of additional HRVOC emissions. The commenter concluded that although two different TCEQ approaches to modeling short-term emission events suggest that the hypothesized releases of August 30 could be expected to cause 4 ppb to 9 ppb of additional ozone, the TCEQ appears to consider this an acceptable explanation for the 43 ppb gap between the model and measured peak ozone levels.

The commenter also indicated that TCEQ failed to properly analyze the

impact of short-term events on ozone formation because of TCEQ's failure to question whether the inventory of emissions caused by short-term releases is accurate in light of the many problems with emissions inventories. The commenter continues that self-reported upset data are estimated using methods that have been called into question for many sources, including flares, cooling towers, storage tanks and fugitive leaks. The commenter gives the example that flare emissions are routinely calculated assuming flare performance is at optimal levels, an assumption that has been questioned by the TCEQ in its technical analysis (e.g., the "big smoky" August 30th flaring event) and by the EPA.

The commenter then criticizes TCEQ for TCEQ's remarks on an absence of evidence available at this time to warrant a correction factor for under-reported upset emissions and as a result, TCEQ decided to not conduct a speculative sensitivity analysis. The commenter continued that on the other hand TCEQ indicated that unreported/underreporting of short term releases of HRVOCs is responsible for the underprediction bias in the modeling on some days.

The commenter concludes that TCEQ's failure to assess the accuracy of the upset inventory causes EPA to speculate on the implications of this omission and exactly how much of the underprediction bias is due to unreported/underreported emission events.

Response M7: As we discussed in our proposal and TSD, the attainment strategy is based on a two-pronged approach: control of routine emissions and a short-term limit to control emission events. The TCEQ indicated that the influence from short-term releases must be removed from the area's design value to determine the design value based on routine emissions. This alternative design value theoretically will more closely correspond to the routine urban ozone formation captured by the model. To remove influence of short-term releases, TCEQ applied Blanchard's technique on the 1999–2001 AIRS data. This technique uses a threshold of a 40 ppb rise in ozone concentration in one hour to distinguish sudden rises from the more typical case where ozone increases more gradually. Removing all days with identified sudden ozone concentration increases (SOCI), an alternate design value of 144 ppb was calculated by TCEQ. Final base case (i.e., Base 5b) includes seven days with modeled peak ozone greater than 144 ppb, so the modeled peaks in fact, represent very well the TCEQ estimated (non-SOCI) design value.

EPA considers the alternative design value approach a reasonable tool in evaluating the possible impact of non-routine emission releases, particularly releases of HRVOCs on the design value. By removing the days that have rapid ozone formation and therefore are possibly the result of large releases, it is possible to get a sense of the impact of emission releases on the design value. We are not convinced that all occasions where ozone rises by 40 ppb from one hour to the next are caused by releases. Some of these events could be caused by continuous plumes of ozone sweeping across a monitor as winds shift direction. These issues take some of the benefit away. In addition, other studies (including H13) of the frequency of reported emission events have indicated that the occurrence of reported events in the right location at the right time in order to impact peak ozone levels only occurs with a small percentage of non-routine releases. Still, we agree that emission events do impact the design value to some degree. Therefore, we agree that considering the alternative non-SOCI design value provides additional evidence that the future design value will reach the standard in the future case.

We disagree with the commenter's criticism of TCEQ's analysis of August 30th. The 30th had a large flaring event that was likely underestimated even with the hypothetical run by TCEQ as the photographs indicate the flare was not completely combusting the emissions. TCEQ considered a hypothetical situation and was conservative (both TCEQ and EPA's TSD include this evaluation) in estimating the true level of emissions present. TCEQ's analysis does indicate that their hypothetical event would impact the ozone levels significantly and if actual emissions data were available to model, it would likely show a much larger impact. TCEQ's analysis was to support that at a minimum, the "big smoky" flare event could have a significant impact on the 30th and other such events would yield similar results. Furthermore, the flare sensitivity does not have to explain all of the underprediction bias on the 30th as many other factors (meteorology, emissions from other sources, etc.) also can result in such a bias.

Furthermore, without the additional monitoring of units in HRVOC service that is included in this SIP revision, it is impossible to determine the absolute accuracy of HRVOC emission estimates from flares and similar emission sources. Therefore neither TCEQ nor EPA, could completely assess the full extent to which that HRVOC emission events impact daily ozone levels. TCEQ has required monitoring and restriction of HRVOC emissions that will reduce the chance of these types of emissions impacting ozone exceedances levels.

As we indicated in the TSD for this notice, other studies (including H13) of the frequency of reported emission events have indicated that the occurrence of reported events in the right location at the right time in order to impact peak ozone only occurs with a small percentage of non-routine releases. The H13 study relied on reported emission events that are likely underreported and also should be considered a conservative estimate of potential impacts from short-term HRVOC emission events since some events are larger than the levels modeled and ozone formation is not linear. TCEQ determined, and EPA concurs, that it is necessary to reduce the frequency of emission events so that emission events do not interfere with attainment of the 1-hour NAAQS, which only allows an average of one exceedance per year. Based on our review, we believe the hourly emission limit will achieve this goal. Because facilities would be expected to take action to avoid emissions events exceeding the short-term limit of 1,200 lbs/hr, we anticipate that the frequency of such events in the future will be lower than in the past and therefore less than one event per year impacting peak ozone should be expected. Even though emission levels above 1,200 lbs/hr do not count towards the Annual Cap, the Annual Cap level is low enough that a source could not operate at a 1,200 lb/hr rate for extended periods without severely impacting its Annual cap level that is on the order of 2,000 lbs/day or less for most facilities (maximum cap is 2,419 lbs/day). For more details about the relationship of the short-term limit and annual cap, please see the response for comment M8, the proposal and TSD materials.

The commenter criticizes TCEQ for not estimating the level of under reporting and unreported emissions, but without flow monitors and other monitoring requirements on HRVOC emissions (that are being approved as part of this revision), it would be pure speculation by TCEQ without any strong basis.

Comment M8: The commenter (Wilson) comments that TCEQ inappropriately assumed that upset emissions will not occur in the future. The commenter continues that TCEQ should have considered the chance for upset emission events to occur in the

future in its weight-of-evidence analysis.

Response M8: While the structure of the HECT and the HRVOC rules anticipates that emission events will not be completely eradicated, EPA believes that in combination these programs provide sufficient disincentives that sources will reduce the frequency and magnitude of large emissions events such that emission events would not be expected to impact peak ozone levels. The University of Texas report "Variable Industrial VOC Emissions and Their Impact on Ozone Formation in the Houston Galveston Area," April 16, 2004, estimated from historic information that it is probable that at least one event will occur annually at a time and location to impact peak ozone. It is therefore necessary to reduce the frequency of emission events so that emission events do not interfere with attainment of the 1-hour NAAQS, which only allows an average of one exceedance per year. Based on this study, we believe the hourly emission limit will achieve this goal. Because facilities would be expected to take action to avoid non-routine emissions events exceeding the short-term limit of 1,200 lbs/hr, we anticipate that the frequency of such events in the future will be lower than in the past and therefore less than one event per year impacting peak ozone should be expected.

Based on the final HECT allocation scheme updated March 20, 2006, the largest allocation is 441.9 tons. This allocation is approximately equivalent to 100.9 lb/hr, assuming the facility will operate with the allocation as an hourly average to represent routine emissions. Therefore, the largest HECT allocation will be approximately twelve times smaller than the 1200 lb/hr short-term limit. For every other source under the HECT, the disparity would be even greater. Based on this difference between the short-term limit and presumed routine emissions levels, no source would be able to operate at the hourly limit for an extended period of time without pushing its emissions total close to or above the annual cap. Therefore, as discussed in our proposal, only truly non-routine emissions are expected to exceed the hourly limit. Furthermore, all exceedances of the 1200 lb/hr limit are subject to enforcement, which should act as a further deterrent to excess emissions events.

Comment M9: The commenter (Wilson) commented that EPA should not approve the TCEQ's approach to less reactive VOCs, but should assume that the failure to analyze and develop control strategies for Other VOCs (non-highly reactive volatile organic compounds) will lead to higher levels of ozone formation than is represented by the TCEQ modeling analysis. The commenter continues that there is evidence that Other VOCs (OVOCs) are underestimated in the inventory and are a source of uncertainty. The commenter cites to a study by Environ "Top Down Evaluation of the Houston Emissions Inventory Using Inverse Modeling" (Yarwood et al., 2003) which indicated that about the right amount of reactivity had been added to the model and that further adjustment is not warranted. The commenter reiterated EPA's TSD by stating that the report indicates that about the right amount of reactivity had been added to the model by TCEQ with scaling of olefin to NO_X emissions and that further adjustment to the inventory is not warranted. The commenter indicates that the Yarwood study is not conclusive on the point of assuming a linear function of emissions from each of the source categories and further cites from the study "this finding does not rule out the possibility of achieving more significant improvements in model performance if just the right combination of relatively large adjustments were applied to the inventory." The commenter continues by further citing from the Yarwood report and indicates that statistically significant improvements in model performance were seen by increasing VOCs from area and mobile sources near and inside Beltway 8, and point sources located in the west end of the Houston Ship Channel. The commenter also indicated that the report indicated that the underestimation of VOCs in the Ship Channel sub-region is particularly severe. The commenter concluded that TCEQ did not conduct a balanced evaluation of the Yarwood study and its OVOC modeling effort when TCEQ adopted the SIP revision.

The commenter indicated that TCEQ's one base case modeling sensitivity with an adjusted OVOC inventory improved model performance including the performance of the peak predicted value.

The commenter indicates that the case for adjusting OVOC emissions is also supported when evaluating the composition of model cell box in Channelview area to the long-term Auto Gas Chromatograph (GC) data from Channelview and Deer Park monitors. The commenter continues that the Ethylene and Olefin portions are a larger percent of total VOC compared to the monitoring data. The commenter also indicates that the OVOCs portions are underestimated by the box model compared to the long-term monitoring data.

The commenter also presented information on TCEQ's future year modeling sensitivity with the OVOCs imputed and then compared future year peak values with the CS06a run and a control of all VOCs run (these runs were in TCEQ's TSD). The commenter comments that the imputing of OVOCs raises peak ozone values 2–30 ppb for the days of the episode.

Response M9: The TCEQ was reluctant to make any inventory adjustments which could be viewed as arbitrary for modeling purposes. Even though there exists some data that OVOCs may be under reported, TCEQ decided that they did not have sufficient data to justify a particular emission inventory adjustment to OVOCs. EPA has also commented in the past that TCEQ should investigate OVOC adjustments and in our TSD and proposal we indicated that OVOC underreporting concern is an issue of uncertainty. At this time though, we recognize that TCEQ did not think they had enough data to develop a control strategy including a inventory that had imputed OVOCs. We agree with the commenter that the Yarwood report has some interesting sensitivities and potential impacts, but the body of data to support an OVOC adjusted inventory was not present when TCEQ developed the SIP in 2004. While the peak modeling values increased in the basecase with the imputed OVOCs, a full model performance analysis including statistics, time series, graphical, and responses to variations in EIs inputs was not done, so EPA does not conclude that overall model performance was better with the imputed OVOCs. A full modeling analysis would need to be conducted with the items listed to determine if the imputed OVOCs was getting the right answer for the right reason. TCEQ conducted model performance analysis of this level with both the base inventory and then with the HRVOC imputed inventory in order to support that the HRVOC imputed inventory was actually an improvement in the modeling. We will continue to encourage TCEQ to investigate OVOCs in the development of their future HGB SIPs. A separate study by Yarwood (H6E.2002 report) cited in our TSD included analysis showing that the Olefin to NO_X imputing factor that TCEQ utilized produces approximately the correct amount of reactivity in the model. The olefin-to-NO_X adjustment was applied only after a large body of peer reviewed research showed conclusively that such a discrepancy

affected emissions of certain HRVOCs from industrial sources. The bibliography included in TCEQ's TSD includes a list of many of the peer reviewed studies considered by TCEQ and reviewed by EPA.

In TCEQ's response to comments on their HGB proposal in June 2004 they agreed that there is some evidence that OVOCs may be underestimated in the modeling inventory, but the evidence to justify adjusting emissions of OVOC is much less conclusive and open to debate. TCEQ's response continued, that at that time, few in-depth analyses of aircraft observations had been conducted comparing OVOC concentrations with those expected based on the reported emissions. The TCEQ compared ambient concentrations of OVOC with the reported inventories at the Clinton Drive and Deer Park monitoring locations and used this data to conduct the OVOC modeling sensitivity. The study suggested that OVOC may be underreported by a factor of 4.8. The scope of this study was limited however, because in 2004 only these two TCEQ sites had collected continuous, multi-year speciated hydrocarbon data in the Ship Channel industrial district. We encourage TCEQ to continue to evaluate the Auto GC data and utilize the data in developing future SIPs.

Based on our comments above on the need for a full base case model performance to justify the OVOC adjustment as an improvement in the modeling, we do not concur with commenter's comment that the future year model predictions with additional OVOCs included are of enough concern that EPA should not approve these SIP revisions. The future year sensitivity modeling is speculative and the base modeling was not verified to actually be a better performing modeling system with the OVOC imputation.

In TCEQ's response to comments on their June 2004 proposal, they indicated that if the OVOC emissions are indeed underestimated substantially, then additional reductions may be necessary. We encourage TCEQ to continue to evaluate OVOCs in their development of the 8-hour SIP for HGB.

Comment M10: The commenter (Wilson) commented that the 8-hour ozone non-interference demonstration is inadequate and biased, and that furthermore, may be based on a faulty emissions inventory since OVOCs were not adjusted and errors in simulating the CS–2001 control strategy occurred. The commenter concludes that EPA must find that the non-interference demonstration is inadequate and disapprove the relaxation of control measures that if kept, could contribute to progress towards attaining the 8-hour standard.

The commenter continues that the 8-hour modeling results presented in TCEQ's TSD shows that the proposed 1-hour strategy falls short of making reasonable progress towards 8-hour attainment. The commenter continues that the plan backslides in comparison to the 2001 approved plan because six of the 16 monitors show higher 8-hour Design Values and the area of exceedances is larger on 6 of the 10 days with the new SIP revisions. The commenter also comments the average of the relative reduction factors is essentially unchanged (0.7 percent lower after implementation of the proposed control strategy as compared to the EPA-approved control strategy) and that significant additional reductions will be necessary to attain the 8-hour ozone standard.

The commenter indicated that in addition to excluding the analysis of adjustments to the OVOC inventory, the TCEQ made a number of other assumptions that tend to bias the non-interference demonstration in favor of the proposed control strategy.

The commenter indicated that the use of updated activity data as the basis for the CS–2001 may add as much as 20 tpd more NO_X than would be allowed by the SIP revision that EPA is proposing to approve. The commenter did recognize that TCEQ had made several technical updates by using Mobile 6 that were acceptable. The commenter commented that a 13 percent increase in VMT that was included for the 2000 motor vehicle emissions budget (MVEB) should have been restricted to the old VMT and that the inclusion of the additional VMT is inappropriate. The commenter continued that they were concerned with the use of a revised/updated 2007 Traffic Demand Model as the basis for the CS–2001 inventory because this included the new activity data, which results in as much as 20 tpd. The commenter continued that the old activity data should be used unless EPA approves a new MVEB.

The commenter indicated that if EPA approves the use of updated activity data for the baseline model, then the MVEB is not a binding constraint. The commenter urged EPA to reconsider our guidance on the noninterference test and conduct our own analysis in a manner consistent with their comments.

Response M10: EPA disagrees with the assertion that the non-interference demonstration is inadequate and biased, and that it represents backsliding. As indicated in more detail in the proposal notice and TSD for this action, it was our observation that while individual monitors may have increases in ozone, overall the modeling metrics indicated either an even benefit or a slight increased benefit for the 8-hour ozone NAAQS. EPA gave the State guidance that non-interference and equivalence can be demonstrated by showing through an air quality analysis, that the new strategy will not create more 8-hour ozone exceedances, higher 8-hour ozone concentrations, or higher cumulative exposure levels than the old strategy.

The 8-hour demonstration process uses the model in a relative sense using Relative Reduction Factors (RRFs), so 8-hour modeling may show attainment with RRF analysis but still have grid cells over the standard in the model predictions. The results indicated that CS–08 is slightly more effective in reducing 8-hour ozone levels than CS–2001 in both average relative reduction factor (0.931 vs. 0.940) and in future design value (107 vs. 108 ppb), even though some stations fare slightly worse under the new control strategy as the commenter indicated. In weighting the 110(l) analysis, the closest thing to the attainment test is the change in RRFs and the change in Future design values between the old and new strategies. This is the brightest line test, so a reduction in these is a good indicator of non-interference. For most of the design values, they decrease with the new strategy (See Table I–3 on page 76 of EPA's TSD). It is also important to realize that all of the higher design values (>95 ppb) decrease with the new strategy and with the exception of the Bayland Park (BAYP) monitor (which dropped 1 ppb), they dropped a significant value (5–8 ppb).

In addition, for both peak 8-hour ozone concentration and exposure metrics, benefits of the new strategy exceed those of the old strategy for every day that was modeled except September 6, where the old strategy performs slightly better. For the area of exceedance however, the comparison is less clear-cut. As the commenter indicated for area of exceedance, the older strategy shows more of a benefit on six of ten days and the new strategy shows a greater benefit on three days and on one day both strategies are equivalent. Even though more grid cell area per day were predicted to be in nonattainment, when the level of ozone above nonattainment was weighted with the grid cells predicted to be in nonattainment, the ozone exposure metric showed improvement for the majority of the days. EPA's guidance for demonstrating attainment for the 8-hour ozone NAAQS is to use the RRFs average for all the days that monitors

had elevated ozone. So even though some days had larger exceedance areas, the ability to attain the 8-hour ozone NAAQS will be more heavily weighted by the change in the average RRFs and the monitors with the higher design values. Although there are uncertainties with comparing the modeled results of the two strategies, EPA believes that the new strategy and the old strategy are at least equivalent in overall 8-hour ozone benefit with the new strategy slightly more effective in reducing the peak ozone values and the old strategy slightly more effective in reducing the area of exceedance. In summary, both the Future design values and RRFs are lower for the new strategy (especially for the higher design values that will be critical in future 8-hour attainment SIP development). Furthermore, two of the three ozone metrics showed improvement with the new strategy. Taking all of these metrics into consideration and recognizing the uncertainties in the modeling, we believe that Texas has demonstrated that the new strategy will not interfere with attainment of the 8-hour standard.

The EPA agrees that a different mix of control measures may be necessary to reach attainment of the 8-hour ozone standard and the State will need to address this in their 8-hour ozone attainment SIP that is due in June 2007. At that same time, the State will need to submit its "reasonable progress" SIP for the 8-hour standard. As discussed previously in the response to comment for M9 comment, EPA determined that the Emission Inventory utilized for this attainment demonstration modeling was acceptable. EPA ultimately agreed with TCEQ that there was not enough data and studies on OVOCs to warrant imputing the inventory for OVOCs. Therefore, it would not have been reasonable to make a OVOC adjustment in the 110(l) analysis.

TCEQ discussed with EPA the best approach to making this demonstration. One of the key issues of concern in conducting it was the fact that the photochemical modeling is now based on an improved August–September 2000 ozone episode rather than the older September 1993 ozone episode on which the December 2000 SIP was based. Recognizing that this was a major change since 2000, the noninterference modeling included the control strategies listed in the December 2000 SIP together with updated inventories and updated methodologies utilizing the 2000 episode.

The commenter emphasized that the December 2000 SIP MVEB placed a "binding constraint" on how any CS–2000 onroad inventory should be developed. It was also suggested that the CS–2000 inventory should have coupled updated MOBILE6-based emission rates with the old VMT and other associated activity data from the December 2000 MVEB. This suggestion is impractical because an onroad emissions inventory which becomes an MVEB is a combination of both emission rates (from the MOBILE emissions model) and activity data (from a travel demand model). EPA concurs with the method that TCEQ conducted the VMT and MVEB for this 110(l) analysis.

The 2007 on-road inventory that was developed for the December 2000 SIP included an estimate of 129.4 million VMT from the Houston Galveston Area Council's (HGAC) travel demand modeling. Since that time, new travel networks, demographic data, census data, etc. inputs have been added to HGAC's travel demand modeling process, and the updated 2007 on-road inventory was developed, 146 million VMT is the best available estimate of 2007 activity levels. This inventory was developed by following EPA's memo entitled "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity", dated January 18, 2002, which can be found at *http://www.epa.gov/otaq/m6.htm.*

The test that EPA has to apply to this SIP revision is that the revisions demonstrate attainment with the 1-hour ozone standard in 2007 and that the revisions will not interfere with any other applicable CAA standard (including 8-hour ozone). EPA is approving these revisions and the revised motor vehicle emission budget in this action.

Comment M11: The commenter (Wilson) commented that the emissions estimates for heavy-duty trucks do not use the best available information and cites a memo from Rick Baker of ERG to Hazel Barbour (TCEQ) dated August 30, 2003 that indicates the 2007 mobile inventory may be underestimated by up to 3.7 tpd of NO_X due to heavy-duty trucks not being reflashed. The commenter also noted that as of November 2004, only 12.7 percent of the applicable trucks nationally had been reflashed. The commenter also commented that the EPA default "reflash" rate of 90 percent for heavy-duty diesel trucks was inappropriate for use in development of the 2007 on-road emissions inventory.

Response M11: The commenter is correct in noting that under a 1998 consent decree with EPA, manufacturers of diesel truck engines are required to install software upgrades (reflash) to engines they sold between 1993 and 1998 with "defeat devices" that resulted in higher NO_X emissions than allowed by applicable certification standards. All States except California are required to use the latest available version of EPA's MOBILE emissions model for on-road SIP inventory development purposes. In addition, States are encouraged to use EPA guidance when using the MOBILE model for SIP purposes. The latest version of the MOBILE6.2 User's Guide (dated August 14, 2003) can be found at *http://www.epa.gov/otaq/m6.htm.* The User's Guide indicates that a default effectiveness rate of 90 percent should be used, unless good local data is available.

While the commenter is correct that some local data with estimates of how many trucks had been reflashed in 2002 and nationally in 2004 exists, the consent decree still requires all the trucks to be reflashed by 2008. With the compliance date of 2008 for the consent decree, EPA has not changed the recommended default value of 90 percent for 2007. While reflash rates may have been slow and below expected levels in 2002 and 2004, the flash rate did increase from 2 percent in 2002 to 12 percent in 2004 according to the comment. Furthermore, EPA still expects the consent decree to be met in 2008, so a high compliance rate in 2007 is thought to be an appropriate estimate. TCEQ modeled 2007 emissions with the EPA recommended default rate of 90 percent reflash rate and decided to utilize EPA defaults. EPA concurred at the time that this was an acceptable assumption. Furthermore in March 2006, EPA issued a letter to TCEQ confirming that for the 8-hr ozone SIP, that TCEQ could use EPA defaults for the MOBILE emission estimates for the truck population subject to the reflash requirement.

Comment M12: The commenter (Wilson) commented that the TCEQ has not revised off-road and area emissions to account for operations of two permitted container and cruise ship port facilities. The commenter indicated that they did not believe the current SIP revision fully accounts for operating emissions related to the rapid growth in port facilities in the Houston region including ship, train and truck emissions that would also increase as a result of the port activity. The commenter asks EPA to evaluate whether these ports and the associated growth emissions were included in the proposed SIP revision.

Response M12: The projected 2007 shipping inventory explicitly accounts for traffic to/from the new Bayport container and cruise terminals. The shipping inventory does not account for

the Texas City container terminal, which was approved long after the current inventory was developed. However, even though the facility plans to open in 2006, the level of activity through 2007 will likely be fairly modest. The TCEQ plans to revise its shipping inventory to include emissions associated with this new port in future modeling work.

Future ship and train emissions are normally accounted for by growth factors developed by applying econometric growth forecasts as was done in this case. During EPA's review of the Bayport Draft EIS's, we reviewed the estimated emissions from increased ship traffic from the new ports and the total was less than the growth amount in tpd of NO_X that TCEQ had included for 2007 modeling in this SIP.

TCEQ estimated train emissions by growing the area-wide inventory according to projected trends. Because there is insufficient information available to allocate emissions of locomotives to specific track segments, the growth was spread across all the track miles in the 8 county area equally. TCEQ has a project to improve Texas locomotive emissions and it's results should be added to the model for the 8-hour SIP.

Truck emissions are based on travel-demand modeling conducted by HGAC, which included the Bayport and Texas City terminals in the 2007 inventories it generated for TCEQ's future case modeling.

Comment M13: The commenter (Wilson) indicates that TCEQ continues to claim credit for emission reductions from the institution of Federal DOE standards on certain appliances even though TCEQ has dropped these measures from their attainment modeling. The commenter states that if these measures have been dropped, then EPA should provide a reference for this change.

Response M13: In the previous SIP, TCEQ had included the DOE energy efficiency benefits as a gap measure but had not modeled the reductions. The HGB area is part of a NO_X Cap and Trade program and any reductions due to increases in energy efficiency, including federal appliance energy efficiency programs, could help utilities maintain their cap and might not yield actual reductions to the HGB airshed. While federal (DOE) appliance energy efficiency programs still exist, TCEQ has dropped taking credit for these programs in this SIP revision because of the HGB Cap and Trade program. TCEQ did not include any potential emission reductions in this SIP revision that may occur for other areas of Texas from DOE appliance energy efficiency programs.

Comment M14: The commenter indicates that EPA should not approve a plan that fails to require industry to reduce emissions of OVOCs. The commenter refers to the comment on OVOC modeling sensitivity to substantiate their comment. Furthermore, the commenter refers to presentations by TCEQ and a report by TCEQ indicating that large amounts of VOC reactivity from OVOC and HRVOCs could yield ozone based on analysis of Auto gas chromatographs that are not part of the chemicals compounds covered by the HRVOC rules. The presentations and reports indicated were: John R. Jolly, Fernando I. Mercado, and David W. Sullivan, "A Comparison of Ambient and Emissions VOC to NO_X Ratios at Two Monitors in Houston, Texas" (Texas Commission on Environmental Quality, June 2004). Mark Estes et al., "Analysis of Automated Gas Chromatograph Data from 1996–2001 to Determine VOCs with Largest Ozone Formation Potential" (TCEQ Technical Support Document Attachment 6, December 2002). Mark Estes, "VOC Reactivity Before, During and After TexAQS 2000" (Presentation to TexAQS Science Meeting, February 2004). John Jolly and Elaine Schroeder, "Analysis of HGB Enhanced Industry-Sponsored Monitoring (EISM) Data" (Presentation to EISM Network Stakeholder Meeting, as updated April 2004). John Jolly et al., "An Analysis of VOC Reactivity in Houston" (TCEQ SIP Technical Support Document Appendix GG, January 23, 2004).

Response M14: See Response to Comment M9 for EPA's comments on the analysis of sensitivity modeling of OVOCs. EPA is approving this package because it has demonstrated that the area will attain the 1-hour ozone standard by November 15, 2007 and that no additional reductions were determined to be needed by TCEQ. EPA had previously reviewed the presentations and reports that the commenter refers to in their comment, prior to our proposed action on these SIP revisions. These studies do suggest that more information is needed on the imputing of OVOCs, but they do not in and of themselves provide enough of a technical basis to take action on imputing OVOCs at this time. EPA encourages TCEQ to continue to evaluate OVOCs and other HRVOCs and consider regulating sources of these chemical compounds if modeling indicates that their control is necessary for attainment of the 8-hour ozone NAAQS.

Comment M15a: The commenter indicates that EPA cannot assume the level of control effectiveness claimed by the TCEQ for regulating HRVOCs. The commenter indicates that TCEQ failed to provide an estimate of rule effectiveness that takes into account that the sources it regulates may not sufficiently encompass the major sources of HRVOCs, and to address the specific challenges of enforcement and implementation. The commenter continued that TCEQ did not consider evaporative emissions from rail tank cars and fugitive emissions from above ground and underground pipelines carrying petroleum products and from barges.

Response M15a: Aircraft flights and other monitoring during and since the TexAQS 2000 study have indicated a significant under-reporting of emissions of HRVOCs that are emitted primarily from industrial sources. As previously discussed in our proposed approval notice (70 FR 58119) and the TSD, EPA believes that the field data collected in 2000 and since indicates that rule effectiveness has been previously overestimated for sources of HRVOCs. TCEQ significantly increased the basecase 2000 inventory for industrial sources of HRVOC by imputing the inventory to correct for the over estimation of rule effectiveness and to bring the 2000 HRVOC rule effectiveness estimate in line with the available ambient data that has been collected. EPA believes TCEQ's adjustment to the basecase inventory is appropriate based on the information available. TCEQ then adopted HRVOC rules to reduce emissions of HRVOCs and put in place additional monitoring to maintain compliance with the new limits on HRVOCs. Because of these changes by TCEQ, EPA finds that rule effectiveness is adequate for the HRVOC program.

Having identified that HRVOC's need to be reduced, as discussed elsewhere, TCEQ adopted rules for the control of HRVOC's. As discussed elsewhere, TCEQ has implemented an annual HRVOC cap to reduce emissions of HRVOCs. TCEQ reduced the annual HRVOC cap levels that were set in the regulations by 5 percent compared to modeled levels in setting the HRVOC annual cap limits in part to address rule effectiveness and emission characterization concerns regarding daily variability in emissions and geographical variability of location of emissions. These HRVOC rules also incorporated stronger monitoring, recordkeeping, and reporting than previous versions of rules for the control of VOCs. Therefore EPA believes that

future rule effectiveness will be much improved over the past.

Specifically, TCEQ now requires direct continuous measurement of flow and heating value of the flow to flares, which is a vast improvement over the past practice using engineering estimates and one time tests. TCEQ also requires monitoring of flow and concentration to cooling towers giving a direct measurement of emissions. When direct measurements are used, no rule effectiveness adjustment is necessary. Finally for fugitive emissions, TCEQ is requiring third party audits that will be used to confirm that the expected rule effectiveness has been achieved for the leak detection and repair program. TCEQ has agreed to utilize the available data, including the first third party audits, to conduct a rule effectiveness study in 2006 and include this analysis in development of future SIPs.

EPA believes that certain past practices are being improved to reduce the uncertainty of the estimates. In particular, the uncertainty introduced by certain assumptions of control efficiency and rule effectiveness is being improved. This approach of reassessing rule effectiveness when additional data is available is consistent with EPA's guidance on how to address rule effectiveness (EPA memo on rule effectiveness from Sally Shaver dated April 27, 1995; and guidance document EPA–452/4–94–001, RULE EFFECTIVENESS GUIDANCE: INTEGRATION OF INVENTORY, COMPLIANCE, AND ASSESSMENT APPLICATIONS). EPA is approving the emission reductions that have been projected for the improved fugitive emissions rules because the new measurement and monitoring requirements in the adopted rule will result in significantly improved accuracy. In addition, Texas has committed to perform a rule effectiveness study and use improved emission inventory techniques to estimate future emissions and confirm the effectiveness of the program.

It is EPA's position that VOC emissions and some HRVOC emissions could occur from the sources that the commenter mentions and are outside the traditional TCEQ regulatory field (evaporative emissions from rail cars in transit, barges in transit, pipelines, etc.). TCEQ has followed EPA guidelines in estimating emissions from these sources in development of the Emission Inventory for this revision. The initial field monitoring data that indicated these may be areas underestimated by traditional EPA guidelines was only starting to be available in 2003–2004 time frame as TCEQ was developing this revision. At the time TCEQ was developing this revision, there was not a sufficient body of data to allow for any estimation of the level of emissions that may exist from these sources that are not in the inventory currently. EPA believes that the inventory reflects the best estimate of emissions that was possible at the time. Inventory analysis is always an ongoing process that is constantly needing to be improved. TCEQ will continue to investigate and improve emission estimates. Furthermore, the investigation into these potential sources of error in the emission inventory will lead to better science and planning of effective control packages to attain the 8-hour standard. We encourage TCEQ and others to continue to use imaging devices and other technologies to help refine emission inventories.

Comment M15b: The commenter indicated that they were concerned with HRVOC fugitive rules for leak monitoring that seem to place determination of the threshold with the source under TCEQ rules section 115.781(f). The commenter felt that the rules should specifically state that TCEQ retains the discretion to determine monitoring intervals.

The commenter indicated that EPA should not approve backsliding on the fugitive rules for facilities not in HRVOC service in the Houston region. The commenter further expressed concern that inspectors and enforcement actions would be hindered by the removal of language on: (1) Specifying the procedure that must be used to demonstrate that leaking components cannot be repaired without a process unit shutdown, (2) specifying the requirements for undertaking extraordinary efforts to control leaks, (3) requiring the use of electronic data collection devices during monitoring, use of an electronic database, and documentation of an auditing process to assure proper calibration, identify response time failures, and assess pace anomalies. These changes were in changes in Texas regulations section 115.352 and 115.354.

Response M15b: EPA disagrees with the assertion from the commenter that TCEQ rules section 115.78(f) and other parts of the new HRVOC rules place determination of threshold with the source. The rules (section 115.788 (a–d)) require third party audits of the HRVOC monitoring at a facility, including 115.78(f) requirements to be conducted and submitted to TCEQ. If these third party audits raise deficiencies, section 115.788(e) requires the source to submit a corrective action plan to TCEQ. Furthermore, Texas rules section 115.788(f) allows for TCEQ and EPA to conduct audits. Upon review of audit results, Texas rules section 115.788(h) allow the TCEQ to specify additional corrective actions. Therefore, EPA believes that TCEQ retains authority to determine compliance with section 115 HRVOC rules, including section 115.78(f).

The commenter is correct that some of the minor rule changes on sources in fugitive service may be considered a relaxation of previous Texas regulations (115.352 and 115.354), but all three changes identified were changes that Texas has made to rules they previously adopted at the state level in 2002. The rules that were changed were never approved into the federal SIP. Therefore these changes are not a relaxation of the federally approved SIP. Many other changes to regulation 115, regarding VOC controls, strengthen the SIP and are considered in the more detail in our TSD. EPA disagrees with the commenter and does not consider this a backsliding issue of federally approved measures.

Comment M15c: The commenter concerns about flare efficiency related to too much air or steam assist and high winds, and questioned what impact these factors can have on a flare's destruction efficiency. The commenter indicated that EPA should not approve rule language that may discourage research and application of monitoring technology to verify destruction efficiencies or the use of remote technology to determine destruction efficiencies.

Response M15c: We are approving the estimates used for flare destruction efficiency because the estimates are based on the best scientific information available. Like the commenter, we are concerned by the uncertainty introduced by having a significant source of emissions which cannot be directly measured. We also share concerns that several factors can potentially impact flare destruction efficiency, including wind speed and volumes to the flare as well as how it is operated, but the current estimates are based on the best information available at the time these SIP revisions were completed. We believe Texas should strongly consider requirements for monitoring steam and air assist ratios to insure that operators maintain these parameters in a range to insure optimum combustion. We also encourage TCEQ to pursue new technology such as the Fourier Transform Infra-red Spectrophotometer to eventually be able to directly measure destruction efficiency in the field.

Comment M15d: The commenter indicated that EPA should evaluate if

interlock devices that regulate the ratio of air (or steam) should be considered reasonably available control measures (RACM), and that EPA should not approve this SIP unless TCEQ develops regulations requiring the use of interlock devices.

Response M15d: We covered the changes to TCEQ's previously approved RACM in detail in the proposal (70 FR 58119) and TSD. EPA determined that all reasonably available control measures were being implemented in the Houston area. In section II.a. of the TSD (pages 51–56), we discuss EPA's analysis that the revised plan will achieve attainment of the one-hour standard, based the controls that will be in place by the ozone season of 2007. As part of the RACM analysis we estimated that to advance attainment more than 39 tpd of additional NO_X emission reductions would have to be achieved before the ozone season of 2006. EPA guidance is that a justification would need to support that a measure was not reasonably available for that area and could be based on technological or economic grounds.

The commenter indicated that EPA should consider requiring interlock devices as RACM. The commenter did not provide a potential quantification of how much emission reductions such a requirement would create nor how such a measure would result in ozone reductions such that attainment could be achieved earlier than 2007. It is not clear that even if such a requirement existed that it would result in enough emission reductions to advance attainment. Furthermore, the comment on the use of interlock devices was not made during TCEQ's development of these rules in 2004 and the first time this issue has been raised was in the commenter's letter to EPA received in November 2005. Even if the interlock devices could result in enough reductions, it would not have been possible for TCEQ to implement a rule requiring the use of interlock devices and for the applicable sources to achieve compliance with a interlock rule by the beginning of the 2006 ozone season. TCEQ rule development alone typically requires at least 9–12 months, so just the rule development timing would have made it impossible to advance attainment. Since attainment could not be advanced, EPA does not consider a requirement for the use of interlock devices to be a potential RACM measure. EPA does strongly encourage TCEQ to consider the use of interlock devices in the development of the 8-hour attainment demonstration for HGB.

Comment M16: The commenter indicates that EPA should discount any emission reduction benefit from the Environmental Monitoring Response System (EMRS). The commenter cited a comment from the TSD for this action indicating that EPA "believes the added scrutiny of ambient VOC levels will provide feedback to industry on the activities that may be causing increased VOC emissions resulting in improved overall program effectiveness and possibly identifying previously unknown sources of emissions." The commenter then commented that TCEQ had recently reported that the goal of stopping HRVOC events in real time can not be achieved with EMRS. The commenter concludes that EPA should not find that the EMRS system will result in emission reductions which have not been accounted for in the model.

Response M16: EPA was aware that TCEQ was trying to stop HRVOC events in real time with the EMRS. During the proposal and development of the EMRS program and to this date, we were skeptical that this could be done considering the meteorology and density of sources in wind sectors around the monitors. We do think that the data and continued focus on what compounds are emitted and alerting the sources is a worthwhile project and should continue to aid in finding new sources or issues that will improve the understanding of ozone formation and exceedances in the HGB area. We do think that it will also be a tool to help determine what facilities or group of facilities should be evaluated further in solving HGB's air quality issues.

Comment M17: The commenter indicates that EPA should not approve the NO_X emission reduction relaxations as these changes will be needed for further progress on the 8-hour.

The commenter commented that in at least one case the ESAD level adopted by Texas was higher than required by California. The commenter indicated that the California standard was for gas fired utility boilers with a capacity greater than 100 mmBtu/Hr is 0.02–0.03 lbs/mmBtu, whereas the Texas standard is 0.03 lb/mmBtu. The commenter continues that TCEQ should provide an evaluation for each difference in ESADs that are being changed with these NO_X MECT revisions and explain why the lower ESAD was not utilized and until this is completed EPA should not approve these revisions.

Response M17: EPA has reviewed this SIP revision package and determined that the package demonstrates attainment of the 1-hour ozone NAAQS. As explained above, this submission was not for the purpose of addressing reasonable further progress forward and attainment of the 8-hour NAAQS. Texas is undertaking a significant and intense new air study (TexAQS II) in HGB. With this new information coming in and new 8-hour modeling taking place it is to early to determine what the appropriate suite of control measures will be for 8-hour attainment. TCEQ is in the process of developing the 8-hour demonstrations which are due to EPA on June 15, 2007.

EPA reviewed the RACM levels as discussed in a previous response and in the TSD for this action. The Texas standard is within the range (although on the high end) of the ESAD for the California rule and was reviewed prior to proposal and determined to be acceptable for RACM. EPA conducted a review of the changes to ESAD levels and documented California levels for each source category and Texas 90 percent and 80 percent in Table 6.B–1 of the TSD and determined the levels to be acceptable. Furthermore, as indicated in a previous response there are no additional measures that could be implemented to advance the attainment date sooner than the current attainment date in 2007.

Statutory and Executive Order Reviews

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 and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more

Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, 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 SIP submissions under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2006. 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 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. Section 52.2270 is amended as follows:

■ a. The table in paragraph (c) entitled "EPA Approved Regulations in the Texas SIP" is amended as follows:

■ 1. By revising entries for Sections 114.1 and 114.2 under Chapter 114 (Reg 4), Subchapter A.

■ 2. By revising the heading entitled "Subchapter B: Vehicle Inspection and Maintenance" under Chapter 114 (Reg 4) to read "Subchapter C—Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties"; adding a new centered heading "Division 1: Vehicle Inspection and Maintenance" immediately following it; revising entries for Sections 114.50, 114.52, and 114.53; and removing the heading entitled "Subchapter C—Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties" that follows Section 114.53.

■ 3. By removing the heading entitled "Division 6: Lawn Service Equipment Operating Restrictions" under Chapter 114 (Reg 4), Subchapter I; and removing entries for Sections 114.452 and 114.459.

■ 4. By removing the heading entitled "Division 1: Motor Vehicle Idling Limitations" under Chapter 114 (Reg 4), Subchapter J; and removing entries for Sections 114.500, 114.502, 114.507, and 114.509.

■ 5. By revising the heading entitled "Chapter 117 (Reg 7)—Control of Air Pollution from Nitrogen Compounds—Subchapter A" to read "Chapter 117 (Reg 7)—Control of Air Pollution from Nitrogen Compounds"; adding a centered heading entitled "Subchapter A—Definitions" immediately following it; and revising the entry for Section 117.10.

■ 6. By revising the heading entitled "Subchapter B—Division 1—Utility Electric Generation in Ozone Nonattainment Areas" under Chapter 117 (Reg 7) to read "Subchapter B—Combustion at Major Sources"; adding a centered heading entitled "Division 1: Utility Electric Generation in Ozone Nonattainment Areas" immediately following it; removing the entry for 117.104; and revising entries for Sections 117.105–117.108, 117.113–117.116, 117.119, 117.131, 117.135, 117.138, 117.141, 117.143, 117.149, 117.203, 117.205–117.207, 117.213–117.216, 117.219, and 117.223.

■ 7. By revising the heading entitled "Subchapter C—Division 1—ADIPIC Acid Manufacturing" under Chapter 117 (Reg 7) to read "Subchapter C—Acid Manufacturing"; adding a centered heading entitled "Division 1: ADIPIC Acid Manufacturing" immediately following it; and revising entries for Sections 117.301, 117.309, 117.311, 117.313, 117.319, 117.321, 117.401, 117.409, 117.411, 117.413, 117.419, and 117.421.

■ 8. By revising the heading entitled "Subchapter D—Water Heaters, Small Boilers, and Process Heaters" under Chapter 117 (Reg 7) to read "Subchapter D—Small Combustion Sources"; adding a new centered heading "Division 1: Water Heaters, Small Boilers, and Process Heaters" immediately following it; adding a new centered heading "Division 2: Boilers, Process Heaters, and Stationary Engines and Gas Turbines at Minor Sources" immediately preceding the entry for Section 117.471; and revising entries for 117.463, 117.465, 117.473, 117.475, 117.478, and 117.479.

■ 9. By removing entries for Section 117.540 and 117.560 under Chapter 117 (Reg 7), Subchapter E; and revising entries for 117.510, 117.512, 117.520, and 117.534.

■ b. The second table in paragraph (e) entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding a new entry at the end to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* * * * * * *				
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles Subchapter A—Definitions				
Section 114.1	Definitions	09/05/04	09/06/06 [Insert *FR* page number where document begins].	
Section 114.2	Inspection and Maintenance Definitions.	09/05/04	09/06/06 [Insert *FR* page number where document begins].	
* * * * * * *				
Subchapter C—Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties Division 1: Vehicle Inspection and Maintenance				
Section 114.50	Vehicle Emission Inspection Requirements.	09/05/04	09/06/06 [Insert *FR* page number where document begins].	Subsection 114.50(b)(2) is NOT part of the approved SIP.
* * * * * * *				
Section 114.52	Early Participation Incentive Program.	09/05/04	09/06/06 [Insert *FR* page number where document begins].	
Section 114.53	Inspection and Maintenance Fees ..	09/05/04	09/06/06 [Insert *FR* page number where document begins].	
Division 3: Early Action Compact Counties				
* * * * * * *				
Subchapter I—Non-Road Engines				
* * * * * * *				
Section 114.429	Affected Counties and Compliance Schedules.	12/06/00	11/14/01, 66 FR 57222.	
Subchapter J—Operational Controls for Motor Vehicles Division 2: Locally Enforced Motor Vehicle Idling Limitations				
* * * * * * *				
Chapter 117 (Reg 7)—Control of Air Pollution from Nitrogen Compounds Subchapter A—Definitions				
Section 117.10	Definitions	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* * * * * * *				
Subchapter B—Combustion at Major Sources Division 1: Utility Electric Generation in Ozone Nonattainment Areas				

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
* *	* *	*	*	*
Section 117.103	Exemptions	09/26/01	114/14/01, 66 FR 57244.	
Section 117.105	Emission Specifications for Reasonably Available Control Technology (RACT).	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.106	Emission Specifications for Attainment Demonstrations.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	The SIP does not include section 117.106(d).
Section 117.107	Alternative System Emission Specifications.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.108	System Cap	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	* *	*	*	*
Section 117.113	Continuous Demonstration of Compliance.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.114	Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.115	Final Control Plan Procedures for Reasonably Available Control Technologies.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.116	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
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Section 117.119	Notification, Recordkeeping, and Reporting Requirements.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
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Division 2—Utility Electric Generation in East and Central Texas				
Section 117.131	Applicability	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
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Section 117.135	Emission Specifications	12/13/02	09/06/06 [Insert *FR* page number where document begins].	The SIP does not include section 117.106(d).
Section 117.138	System Cap	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.141	Initial Demonstration of Compliance	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.143	Continuous Demonstration of Compliance.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
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Section 117.149	Notification, Recordkeeping, and Reporting Requirements.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
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Section 117.203	Exemptions	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.205	Emission Specifications for Reasonably Available Control Technology (RACT).	12/13/02	09/06/06 [Insert *FR* page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 117.206	Emission Specifications for Attainment Demonstration.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	The SIP does not include section 117.206(e).
Section 117.207	Alternative Plant-wide Emission Specifications.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	* *	*	*	*
Section 117.213	Continuous Demonstration of Compliance.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.214	Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.215	Final Control Plan Procedures for Reasonably Available Control Technologies.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.216	Final Control Plan Procedures for Attainment Demonstration Emission Specifications.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	* *	*	*	*
Section 117.219	Notification, Recordkeeping, and Reporting Requirements.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	* *	*	*	*
Section 117.223	Source Cap	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
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Subchapter C—Acid Manufacturing Division 1: ADIPIC Acid Manufacturing				
Section 117.301	Applicability	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	* *	*	*	*
Section 117.309	Control Plan Procedures	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.311	Initial Demonstration of Compliance	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.313	Continuous Demonstration of Compliance.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.319	Notification, Recordkeeping, and Reporting Requirements.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.321	Alternative Case Specific Specifications.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Division 2: Nitric Acid Manufacturing, Ozone Nonattainment Areas				
Section 117.401	Applicability	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
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Section 117.409	Control Plan Procedures	12/13/02	09/06/06 [Insert *FR* page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 117.411	Initial Demonstration of Compliance	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.413	Continuous Demonstration of Compliance.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.419	Notification, Recordkeeping, and Reporting Requirements.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.421	Alternative Case Specific Specifications.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	* *	*	*	*
Subchapter D—Small Combustion Sources				
Division 1: Water Heaters, Small Boilers, and Process Heaters				
* *	* *	*	*	*
Section 117.463	Exemptions	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.465	Emission Specifications	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	* *	*	*	*
Division 2: Boilers, Process Heaters, and Stationary Engines and Gas Turbines at Minor Sources				
Section 117.471	Applicability	09/26/01	11/14/01, 66 FR 57244.	New.
Section 117.473	Exemptions	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	* *	*	*	*
Section 117.475	Emission Specifications	12/13/02	09/06/06 [Insert *FR* page number where document begins].	The SIP does not include section 117.475(i).
Section 117.478	Operating Requirements	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.479	Monitoring, Recordkeeping, and Reporting Requirements.	12/13/02	09/06/06 [Insert*FR* page number where document begins].	
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Subchapter E—Administrative Provisions				
Section 117.510	Compliance Schedule for Utility Electric Generation in Ozone Nonattainment Areas.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.512	Compliance Schedule for Utility Electric Generation in East and Central Texas.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.520	Compliance Schedule for Industrial, Commercial, Institutional Combustion Sources in Ozone Nonattainment Areas.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 117.534	Compliance Schedule for Boilers, Process Heaters, Stationary Engines, and Gas Turbines at Minor Sources.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 117.570	Use of Emissions Credits for Compliance.	03/05/03	03/26/04, 69 FR 15686.	
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EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * * * *				
Attainment Demonstration for Houston/Galveston/Brazoria (HGB) One-hour Ozone Nonattainment Area Adopting Strategy Based on NO_X and Point Source Highly-Reactive VOC Emission Reductions.	Houston/Galveston, TX.	12/01/04	09/06/06 [Insert *FR* page number where document begins].	

[FR Doc. 06–7412 Filed 9–5–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0006; FRL–8216–3]

Approval and Promulgation of State Implementation Plans; Texas; Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Texas State Implementation Plan (SIP) concerning the Emission Credit Banking and Trading Program. Additionally, EPA is approving a section of Chapter 115 of the Texas Administrative Code (TAC) on Control of Air Pollution from Volatile Organic Compounds that cross-references the Emission Credit Banking and Trading Program and the Discrete Emission Credit Banking and Trading Program. We are also approving a subsection of Chapter 116 of the TAC, Control of Air Pollution by Permits for New Construction or Modification, which provides a definition referred to in both the Emission Credit and the Discrete Emission Credit Banking and Trading Programs.

DATE: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0006. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15-cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, Air Permitting Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone 214–665–2115, *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean EPA.

Outline

I. What action is EPA taking?

EPA is approving the Emission Credit Banking and Trading program, also referred to as the Emission Reduction Credit (ERC) program, enacted at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H Emissions Banking and Trading, Division 1, sections 101.300–101.304, 101.306, 101.309, and 101.311. These sections were submitted as SIP submittals dated December 20, 2000 (state effective date January 18, 2001);

July 15, 2002 (state effective date April 14, 2002); January 31, 2003 (state effective date January 17, 2003), and December 06, 2004 (state effective date December 2, 2004). Also in this document, EPA is approving section 115.950 in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, which cross-references the ERC program and the Discrete Emission Credit Banking and Trading program, referred to as the Discrete Emission Reduction Credit (DERC) program. This revision was provided in a SIP submittal dated December 20, 2000 (state effective date January 18, 2001). EPA is also approving the definition of "facility" published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter A, section 116.10, submitted as a SIP revision July 22, 1998 (state effective date December 23, 1997).

As discussed in our proposed action at 70 FR 58151–58153, we conclude that the ERC program is consistent with section 110(l) of the Clean Air Act.

The ERC program contains several features that EPA feels are important enough to discuss here. Section 101.302 of the ERC program generally requires that an emission credit be used in the nonattainment area in which it was generated unless the user has obtained prior written approval of both the TCEQ Executive Director and EPA. This section also provides for the use of emission credits generated in another county, state, or nation. Although the threshold EPA approval requirement of section 101.302(f) ensures that EPA approval is necessary for any of the above transactions, TCEQ has agreed to clarify the rule language by December 1, 2006, to more clearly require EPA approval for all transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another, or from attainment counties into nonattainment counties.

EPA has addressed the possibility of cross-jurisdictional trades, such as those in section 101.302, in Appendix 16.16 of "Improving Air Quality with Economic Incentive Programs" (EPA–452/R–01–001, January 2001) (EIP Guidance). Satisfaction of the provisions of Appendix 16.16 will ensure that cross-jurisdictional trades are consistent with the fundamental integrity, equity, and environmental benefit principles described in the EIP Guidance. The EPA review and approval authority contained in section 101.302(f) will be the mechanism by which EPA ensures that inappropriate trades do not take place. In particular, EPA intends to require a further SIP revision (either a detailed trading program, such as an MOU, or a trade-specific submission) before approving any international trade, interstate trades, or intrastate trades that involve reductions from beyond the nonattainment area.

Among these types of trades requiring a further SIP revision, international trades present an especially difficult case. For instance, currently there is no approvable mechanism for demonstrating that reductions made in another country are surplus or enforceable. Nonetheless, emission reductions in other countries could potentially offer substantial air quality benefits in the United States. In approving the ERC program, EPA is recognizing the concept of international trading and describing a framework (*i.e.*, the submission of a SIP revision demonstrating, among other things, the validity and enforceability of foreign reductions) for such trading, in the event that a suitable and approvable mechanism is ever developed for resolving concerns including enforceability and surplus. Until such a mechanism is developed and approved by EPA, however, EPA will not approve international trades under the ERC rule.

EPA is also approving a provision in section 101.302(d) that allows generators and users of ERCs to use an alternate quantification protocol that is different from one of the approved protocols in Chapter 115 or Chapter 117 (Control of Air Pollution from Volatile Organic Compounds and Control of Air Pollution from Nitrogen Compounds) of the Texas rules. Generators/users wanting to use other quantification protocols must follow the quantification requirements at section 101.302(d)(1)(C), which include a requirement for EPA adequacy review of such alternate protocols. TCEQ has agreed to clarify the provisions of section 101.302(d)(1)(C) by December 1, 2006, to clarify that a proposed alternate quantification protocol may not be used if the TCEQ Executive Director receives a letter from EPA that objects to the use of the protocol during the 45-day adequacy review period or if EPA proposes disapproval of the protocol in the **Federal Register**. See also 70 FR 58149 for a description of the approval process for alternate quantification protocols.

Today's action also approves the use of ERCs for compliance with the Highly-Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) program in the HGB nonattainment area. Section 101.306(a)(7) provides that ERCs can be used for "compliance with other requirements as allowable within the guidelines of local, state, and federal laws." Therefore, even though the ERC program does not specifically mention the use of ERCs within the HECT, it is authorized by the general provision. The TCEQ has agreed to revise the section 101.306 language by December 1, 2006, to specify that ERCs may be used with the HECT as an annual allocation of allowances under section 101.399.

II. What is the background for this action?

The ERC rules establish a type of Economic Incentive Program (EIP). This program provides flexibility for sources in complying with certain State and Federal requirements. The ERC program was first adopted by the State at 30 TAC section 101.29 on December 23, 1997, for use with volatile organic compound (VOC) and nitrogen oxides (NO_X) requirements in ozone nonattainment areas. Effective January 18, 2001, section 101.29 was repealed and Chapter 101, Subchapter H, Divisions 1, 3, and 4 were created for the ERC, Mass Emissions Cap and Trade (MECT) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area, and Discrete Emission Credit Banking and Trading (DERC) programs, respectively. As of April 14, 2002, TCEQ amended the geographic scope of the ERC program to include provisions for reductions generated outside the United States at section 101.302. Effective January 17, 2003, TCEQ reorganized the ERC and DERC program rules into more standardized formats parallel to each other, with a rule structure that followed a process of recognizing, quantifying, and certifying reductions as credits while explaining the guidelines for trading and using creditable reductions. These revisions amended sections 101.300, 101.301, 101.302, 101.303, 101.304, 101.306, 101.309, and 101.311. The most recent submittal, of December 06, 2004, amended sections 101.300, 101.302, 101.303, 101.304, and 101.311, expanding the ERC program to cover reductions of criteria pollutants (excluding lead) or precursors of criteria pollutants for which an area is designated nonattainment. The ERC program adoption and the subsequent revisions were submitted to EPA as SIP revisions; today's approval is the first time we have acted on this program. In doing so we are acting on the original submission of July 22, 1998, and all subsequent revisions through the December 6, 2004, submittal.

III. What are EPA's responses to comments received on the proposed action?

EPA's responses to comments submitted by Galveston-Houston

Association for Smog Prevention (GHASP), Environmental Defense (Texas Office), the Lone Star Chapter of the Sierra Club, and Public Citizen (Texas Office) on November 4, 2005, are as follows. EPA has summarized the comments below; the complete comments can be found in the ERC rulemaking docket (EPA–R06–OAR–2005–TX–0006). In commenting on the ERC program, these commenters raise no concerns about pollutants other than VOCs (and highly reactive VOC, or HRVOC) emissions.[1]

Comment 1: There are problems with the inventory of VOC and HRVOC emissions in the HGB nonattainment area.

Response to Comment 1: While EPA acknowledges that there have been past VOC emission inventory problems from sources associated with the petrochemical industry (see our proposed approval of the revisions to the HGB attainment demonstration, 70 FR 58119), EPA believes that the emissions inventory developed by TCEQ for the HGB nonattainment area is an acceptable approach to characterizing the emissions in the HGB nonattainment area. In addition, we are incorporating by reference our responses to comments provided in our approval of the attainment demonstration for the HGB ozone nonattainment area (EPA–R06–OAR–2005–TX–0018). Those responses more specifically address the commenters' concerns regarding the development and use of the imputed inventory, characterization of other VOCs in the inventory, and appropriate emissions monitoring techniques for flares, fugitive emissions, and upsets.

Comment 2: The VOC and HRVOC trading programs use unreliable data, which cannot be replicably measured. There are problems with current methods for measurement of HRVOC and VOC emissions; therefore, the VOC and HRVOC trading programs do not meet EPA's EIP Guidance for quantification.

Response to Comment 2: EPA disagrees. The proposed ERC rule, at 70 FR 58149, describes the basis for EPA's conclusion that the ERC rule satisfies the EIP Guidance criteria on quantifiability, which are found in Chapter 4 ("Fundamental Principles of All EIPs").

Emissions and emission reductions attributed to an EIP are quantifiable if they can be reliably and replicably measured: The source must be able to reliably calculate the amount of emissions and emission reductions from the EIP strategy, and must be able to replicate the calculations. Under the ERC program, sources address the element of quantification by using a quantification protocol that has been approved by TCEQ and EPA. Both agencies have important roles in ensuring these protocols provide reliable and replicable emission measurements. The approved quantification protocols for VOC ERC generation and use are contained in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. These methods are all reliable and replicable, either because EPA has promulgated regulations or published guidance listing them as appropriate methods for measuring VOC emissions, or because the American Society for Testing and Materials (ASTM) has determined that they are appropriate standard methods. EPA approval is required before an alternate quantification protocol can be used. See section 101.302(d)(1)(C). Examples of the approved quantification methods for VOC ERC generation and use include:

- Test Methods 1–4 (40 CFR 60, Appendix A) for determining flow rates;
- Test Method 18 (40 CFR 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- EPA guidance in "Procedures for Certifying Quantity of Volatile Organic Compounds (VOC) Emitted by Paint, Ink, and Other Coating," EPA–450/3–84–019; and
- Determination of true vapor pressure using ASTM Methods D323–89, D2879, D4953, D5190, or D5191 for the measurement of Reid Vapor pressure.

Comment 3: TCEQ and EPA lack confidence in current methods for measuring emissions. This lack of confidence increases the risks associated with a market-based trading program, until the TCEQ is able to reconcile ambient monitoring with industry emission inventories. For example, trading could exacerbate the challenge of identifying the cause of any program failures because comparisons of ambient monitoring trend data to emission inventory data will require consideration of the timing and magnitude of trades.

Response to Comment 3: EPA disagrees. We have discussed above in response to Comments 1 and 2 our conclusion that the methods used for measuring emissions under the ERC program are consistent with EPA policy and guidance, and that the emissions inventory developed by TCEQ is an acceptable approach to characterizing the emissions in the HGB nonattainment area. Sources that generate and use ERCs must notify the TCEQ. The TCEQ is then responsible for certifying that the generation or use strategy is appropriate. Through the certification process TCEQ is made aware of trades before they happen. This advance knowledge of trades could then be applied to the reconciliation process and actually provide additional data instead of being a hindrance.

Comment 4: EPA should find that it is premature for TCEQ to allow trading of unquantifiable emissions of VOCs in the HGB nonattainment area. If either the source or the recipient incorrectly estimates the emissions involved in a trade, the region is at risk of a net increase in emissions as a result of the trade. Until refineries and chemical plants are able to routinely quantify their VOC emissions, EPA should not allow trading of these VOC emissions.

Response to Comment 4: EPA disagrees that VOC emissions should be ineligible for trading in the HGB nonattainment area. EPA believes that allowing the petrochemical industry to trade VOC emissions under the ERC rule is appropriate notwithstanding the commenter's concern about emissions estimates, because the ERC program satisfies the EIP Guidance criteria for quantification. For example, sources generating and banking VOC ERCs must either use the approved quantification protocols in Chapter 115 or obtain EPA approval for an alternate quantification method. These protocols will ensure that sources correctly calculate the emission reduction to be banked as an ERC. The source using the banked reduction also must calculate the amount of necessary VOC ERCs using the approved quantification protocols. The TCEQ Executive Director will review and approve each requested ERC use to ensure that sources using ERCs have enough credit to cover their use strategy. Therefore, EPA believes that sources using the approved quantification protocols will correctly estimate the amount of ERCs generated

[1] During the comment period, EPA did not receive comments regarding environmental justice and the ERC program. However, during the finalization process we have reevaluated our interpretation of the definition of Environmental Justice as found in Executive Order 12898. In our proposed approval of the ERC program, we stated that "environmental justice concerns arise when a trading program could result in disproportionate impacts on communities populated by racial minorities, people with low incomes, or Tribes." On further review, we believe the following description is more consistent with E.O. 12898: "Environmental justice concerns can arise when a final rule, such as a trading program, could result in disproportionate burdens on particular communities, including minority or low income communities." This revised language does not alter our determination that the ERC program does not raise environmental justice concerns.

and used, and we also believe that the program is designed to minimize incorrect emissions estimates. Further, users of VOC ERCs must purchase and retire an additional ten percent VOC ERCs as an environmental benefit. The ten percent environmental benefit will also help ensure that the trading program will not negatively impact the nonattainment area in which the ERC is generated and used.

EPA's response to Texas Industry Project (TIP) comments made on November 4, 2005, is as follows:

Comment: TIP supports EPA's proposed approval of the ERC program and urges EPA to finalize its approval as soon as practicable.

Response: EPA appreciates the support of TIP for our approval of the ERC program.

IV. What does federal approval of a State regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the federally approved SIP is primarily a State function. However, once the regulation is federally approved, EPA and the public may take enforcement action against violators of these regulations.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, 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 SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2006. 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 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended:

■ a. Under Chapter 101—General Air Quality Rules, under the centered heading Subchapter H—Emissions Banking and Trading, by adding a new centered heading "Division 1—Emission Credit Banking and Trading" followed by new entries for sections 101.300, 101.301, 101.302, 101.303, 101.304, 101.306, 101.309, and 101.311;

■ b. Under Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds, under the centered heading Subchapter J—Administrative Provisions, immediately before the entry for section 115.950, by adding a new centered heading "Division 4—Emissions Trading" and by revising the entry for section 115.950;

■ c. Under Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification, under the centered heading Subchapter A—Definitions, by revising the entry for section 116.10.

The additions and revisions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal	Explanation approval date	Explanation
Chapter 101—General Air Quality Rules				
* *	* *	* *	*	*
Subchapter H—Emissions Banking and Trading Division 1—Emission Credit Banking and Trading				
Section 101.300	Definitions	11/10/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.301	Purpose	12/13/02	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.302	General Provisions	11/10/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.303	Emission Reduction Credit General and Certification.	11/10/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.304	Mobile Emission Reduction Credit Generation and Certfication.	11/10/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.306	Emission Credit Use	12/13/02	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.309	Emission Credit Banking and Trading.	12/13/02	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
Section 101.311	Program Audits and Reports	11/10/04	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	
* *	* *	* *	*	*
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
* *	* *	* *	*	*
Subchapter J—Administrative Provisions				
* *	* *	* *	*	*
Division 4—Emissions Trading				
Section 115.950	Use of Emissions Credits for Compliance.	12/06/00	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal	Explanation approval date	Explanation
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification Subchapter A—Definitions				
Section 116.10	General Definitions	06/17/98	[Insert date of *FR* publication] [Insert *FR* page number where document begins].	The SIP does not include subsections 116.10(1), (2), (3), (6), (8), (9), (10), and (14).
* * * * * * *				

[FR Doc. 06–7413 Filed 9–5–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0029; FRL–8216–5]

Approval and Promulgation of State Implementation Plans; Texas; Discrete Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; conditional approval.

SUMMARY: EPA is finalizing our conditional approval of revisions to the Texas State Implementation Plan (SIP) concerning the Discrete Emission Credit Banking and Trading Program.

DATES: This rule is effective on October 6, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0029. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15-cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, Air Permitting Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone 214–665–2115, *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean EPA.

Outline

I. What action is EPA taking?

EPA is conditionally approving, as part of the Texas SIP, the Discrete Emission Credit Banking and Trading program, also referred to as the Discrete Emission Reduction Credit (DERC) program, enacted at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H, Division 4, sections 101.370–101.374, 101.376, 101.378, and 101.379. These revisions were provided in SIP revisions dated July 22, 1998 (state effective date December 23, 1997); December 20, 2000 (state effective date January 18, 2001); July 15, 2002 (state effective date April 14, 2002); January 31, 2003 (state effective date January 17, 2003), and December 06, 2004 (state effective date December 2, 2004).

As discussed in our proposed action at 70 FR 58164–58166, we conclude that the DERC program is consistent with section 110(l) of the Clean Air Act.

The DERC program that we are conditionally approving today into the Texas SIP includes numerous cross-references to different State rules. In order to be able to conditionally approve (or fully approve) a revision into a SIP, we also must conditionally approve (or fully approve) any cross-referenced rules that are integral to the establishment, implementation, and enforcement of the SIP revision. Our detailed evaluation of all the cross-references in the State's DERC rule language to other State rules not part of Subchapter H, Division 4, sections 101.370–101.374, 101.376, 101.378, and 101.379 can be found in the "Review of Cross-References in the DERC Program" discussion in Section IV of the Technical Support Document (available in the rulemaking docket EPA–R06–OAR–2005–TX–0029).

Today, EPA finds that the cross-references in the following sections of the DERC program have already been approved into the Texas SIP: 101.370(29) at 65 FR 70792; 101.372(b)(3) at 63 FR 11835; 101.372(d)(1)(A) at 66 FR 57244; 101.372(d)(1)(B) at 60 FR 12438, 62 FR 27964, 65 FR 18003, 66 FR 36917, and 66 FR 54688; 101.372(f)(4) at 66 FR 36917; 101.373(b)(1) at 67 FR 58697; and 101.376(d)(2)(A) at 66 FR 57244. Additionally, the cross-references in sections 101.370(28) and 101.376(c)(5) have been approved by the EPA into the Texas Federal Operating Permits Program on December 06, 2001, and March 31, 2005. The cross-reference in section 101.376(b)(3) is addressed in a

corresponding action on the Texas Mass Emissions Cap and Trade program published separately in today's **Federal Register**.

We are not approving section 101.376(c)(4) into the Texas SIP because the cross-references to 30 TAC Chapter 106 Permit by Rule, sections 106.261 (3) or (4) or section 106.262(3) are incorrect and do not exist in State law, the Texas SIP, or the Texas Federal Operating Permits program. Consequently, unless and until the State adopts and submits a revision to EPA for approval as a SIP revision and EPA approves it, the use of discrete emission credits to exceed the provisions in certain types of pre-construction permits termed Permits by Rule is not available under the Texas SIP.

In our proposed conditional approval of the DERC program, we also proposed approving section 115.950 in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, which cross-references the DERC program, and we proposed approving the definition of "facility" published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter A, section 116.10. Our final action on those two provisions is not included in this final rule, but is instead in our final action on the Emission Credit Banking and Trading program, referred to as the Emission Reduction Credit (ERC) program. Our approval of sections 115.950 and the definition of "facility" in 116.10 is not affected by the conditions on our approval of the DERC program.

II. What is a conditional approval?

Under section 110(k)(4) of the Clean Air Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain that is no more than one year from the date of conditional approval. If EPA determines that the revised rule is approvable, EPA will propose approval of the rule. If the State fails to meet its commitment within the one-year period, the approval is treated as a disapproval. There are at least two ways that the conditional approval may be converted to a disapproval.

- If the State fails to adopt and submit the specified measures by the date it committed to do so, or fails to submit anything at all, EPA will issue a finding of disapproval, but will not have to propose the disapproval. No proposal is required, because in the original proposed and final conditional approval EPA will have provided notice and an opportunity for comment on the fact that EPA would directly make the finding of disapproval (by letter) if the State failed to submit anything. Therefore, under this scenario, after the date by which the state committed to adopt and submit the measures, the Regional Administrator (RA) would send a letter to the State finding that it failed to meet its commitment and that the SIP submittal was therefore disapproved. The 18-month clock for sanctions and the two-year clock for a Federal Implementation Plan (FIP) would start as of the date of the letter. Subsequently, a notice to that effect would be published in the **Federal Register**, and appropriate language inserted in the Code of Federal Regulations (CFR). Similarly, if EPA receives a submittal addressing the commitment but determines that the submittal is incomplete, the RA will send a letter to the State making such a finding. As with the failure to submit, the sanctions and FIP clocks will begin as of the date of the finding letter.
- Where the State does make a complete submittal by the date it committed to do so, EPA will evaluate that submittal to determine if it may be approved and will take final action on the submittal within 12 months after the date EPA determines the submittal is complete. If the submittal does not adequately address the deficiencies that were the subject of the conditional approval, and is therefore not approvable, EPA must go through notice-and-comment rulemaking to disapprove the submittal. The 18-month clock for sanctions and the two-year clock for a FIP start as of the date of final disapproval.

In either instance, whether EPA finally approves or disapproves the rule, the conditional approval remains in effect until EPA takes its final action. Note that EPA will conditionally approve a certain rule only once. Subsequent submittals of the same rule that attempt to correct the same specifically identified problems will not be eligible for conditional approval.

III. What future actions are necessary for the DERC rule to fully meet EPA's expectations?

TCEQ has submitted a commitment letter to Region 6 outlining the steps that will be taken to achieve full approval. This letter, dated September 8, 2005, can be found in the DERC administrative record, EPA–R06–OAR–2005–TX–0029. The commitments are:

(1) Revising the language in section 101.373:

a. To prohibit the future generation of discrete emission reduction credits from permanent shutdowns; and

b. To allow discrete emission reduction credits generated from permanent shutdowns before September 30, 2002, to remain available for use for no more than five years from the date of the commitment letter.

(2) TCEQ will perform a credit audit to remove from the emissions bank all discrete emission reduction credits generated from permanent shutdowns after September 30, 2002.

(3) Revising the language in sections 101.302(f), 101.372(f)(7), and 101.372(f)(8) to clarify that EPA approval is required for individual transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another or from attainment counties into nonattainment areas.

(4) TCEQ will revise Form DEC–1, Notice of Generation and Generator Certification of Discrete Emission Credits; Form MDEC–1, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits; and Form DEC–2, Notice of Intent to Use Discrete Emission Credits, to include a waiver to the Federal statute of limitations defense for generators and users of discrete emission credits.

(5) TCEQ will maintain its current policy of preserving all records relating to discrete emission credit generation and use for a minimum of five years after the use strategy has ended.

Additionally, TCEQ has agreed to comply with these commitments during the conditional approval period. Specifically, TCEQ will not approve any trades involving the types of reductions described in item (3) above, will not approve any use of discrete shutdown credits that were generated after September 30, 2002, will only allow shutdown DERCs generated before September 30, 2002, to be used for up to five years from the date of the commitment letter, and will require the waiver described in item (4) above for generators and users of discrete emission credits. TCEQ must submit revised rules satisfying the above conditions to EPA on or before December 01, 2006. The conditional approval will automatically become a disapproval if the revisions are not completed and submitted to EPA by this date.

IV. What is the background for this action?

The DERC rules establish a type of Economic Incentive Program (EIP), in particular an open market emissions trading program as described in EPA's EIP Guidance document, Improving Air Quality with Economic Incentive

Programs' (EPA–452/R–01–001, January 2001). This program provides flexibility for sources in complying with certain State and Federal requirements. In an open market trading program, a source generates emission credits by reducing its emissions during a discrete period of time. These credits, called discrete emission credits, or DECs, in the Texas program, are quantified in units of mass. Discrete emission credit (DEC) is a generic term that encompasses reductions from stationary sources (discrete emission reduction credits, or DERCs), and reductions from mobile sources (mobile discrete emission reduction credits, or MDERCs). The DERC program was first adopted by the State at 30 TAC section 101.29 on December 23, 1997. Effective January 18, 2001, section 101.29 was repealed and Chapter 101, Subchapter H, Divisions l, 3, and 4 were created. This action created separate divisions for the ERC, Mass Emissions Cap and Trade (MECT) in the Houston/Galveston/Brazoria (HGB) area, and DERC programs. Amendments to the MECT were adopted on October 18, 2001; these amendments also included changes made primarily for clarification to sections 101.370, 101.372, and 101.373 in the DERC program. As of April 14, 2002, TCEQ amended the program to include the provisions in Texas Senate Bill 1561 for air emissions trading across international boundaries. Effective January 17, 2003, TCEQ reorganized the DERC and ERC program rules into more standardized formats parallel to each other, with a rule structure which followed a process of recognizing, quantifying, and certifying reductions as credits while explaining the guidelines for trading and using creditable reductions. The most recent submittal, of December 06, 2004, amended sections 101.370, 101.373, 101.373, and 101.376. The DERC program adoption and the subsequent revisions were submitted to EPA for approval into the SIP; however, today's approval is the first time we have acted on this program. In doing so we are acting on the original submission of July 22, 1998, and all subsequent revisions through the December 6, 2004, submittal.

The DERC program contains several features that EPA feels are important enough to discuss here. The DERC program provides at section 101.372(f) that emission reductions from another county, state, or nation may be used subject to certain conditions. The current wording of the rule is unclear as to when prior approval from EPA will be required. To improve this aspect of the rule, on completion of the condition outlined above the rule will more clearly require prior EPA approval for all transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another, or from attainment counties into nonattainment counties.

EPA has addressed the possibility of cross-jurisdictional trades, such as those in section 101.372, in Appendix 16.16 of the EIP Guidance. Satisfaction of the provisions of Appendix 16.16 will ensure that cross-jurisdictional trades are consistent with the fundamental integrity, equity, and environmental benefit principles described in the EIP Guidance. The EPA review and approval authority in section 101.372(f), as revised in accordance with EPA's conditions for approval, will be the mechanism by which EPA ensures that inappropriate trades do not take place. In particular, EPA intends to require a further SIP revision (either a detailed trading program, such as an MOU, or a trade-specific submission) before approving any international trade, interstate trades, or intrastate trades that involve increases in a nonattainment area and reductions from beyond that nonattainment area.

Among these types of trades requiring a further SIP revision, international trades present an especially difficult case. For instance, currently there is no approvable mechanism for demonstrating that reductions made in another country are surplus or enforceable. Nonetheless, emission reductions in other countries could potentially offer substantial air quality benefits in the United States. In approving the DERC program, EPA is recognizing the concept of international trading and describing a framework (i.e., the submission of a SIP revision demonstrating, among other things, the validity and enforceability of foreign reductions) for such trading, in the event that a suitable and approvable mechanism is ever developed for resolving concerns including enforceability and surplus. Until such a mechanism is developed and approved by EPA, however, EPA will not approve international trades under the DERC rule.

EPA is also approving a provision in section 101.372(d) that allows generators and users of DERCs to use an alternate quantification protocol that is different from one of the approved protocols in Chapter 115 or Chapter 117 (Control of Air Pollution from Volatile Organic Compounds and Control of Air Pollution from Nitrogen Compounds) of the Texas rules. Generators/users wanting to use other quantification protocols must follow the quantification requirements at section 101.372(d)(1)(C), which include a requirement for EPA adequacy review of such alternate protocols. TCEQ has agreed to clarify the provisions of section 101.372(d)(1)(C) by December 1, 2006, to clarify that a proposed alternate quantification protocol may not be used if the TCEQ Executive Director receives a letter from EPA that objects to the use of the protocol during the 45-day adequacy review period or if EPA proposes disapproval of the protocol in the **Federal Register**. See also 70 FR 58157 for a description of the approval process for alternate quantification protocols.

EPA is also approving a provision in section 101.376 that allows DECs to be used as new source review (NSR) offsets. Section 101.376 outlines criteria for DEC usage and NSR permits that must be satisfied for DECs to be used as NSR offsets. With these restrictions and the environmental benefit provisions of the DERC program, we feel that the use of DECs as NSR offsets is consistent with sections 171 and 173 of the Clean Air Act and the EIP Guidance. See 70 FR 58160 for our more detailed discussion of DECs as NSR offsets.

Additionally, EPA is approving the use of DECs in lieu of allowances in the Houston/Galveston/Brazoria (HGB) MECT program for emissions of nitrogen oxides (NO_X). Section 101.376 of the DERC program enables the use of DECs in the MECT, but the rule language providing the detailed usage requirements for DECs under the MECT is in section 101.356(h) of the MECT program, which we are approving elsewhere in today's **Federal Register**. Because of the interaction between the DERC and MECT programs, the conditional approval commitments of the DERC program must be interpreted with respect to the use of DECs in the MECT. DECs can be used as allowances in the MECT subject to the requirements of section 101.356(h), and only if the DECs meet the conditions outlined above. Therefore, the TCEQ will not approve the use of any DERCs that were generated from shutdowns since September 30, 2002, and the use of banked shutdown DERCs generated before September 30, 2002, must occur within 5 years from the date of the commitment letter. In addition, with respect to all DECs that are to be used in the MECT programs, both generators and users of such DECs must certify to a waiver of the Federal statute of limitations. EPA approval is also required when DECs generated in another state or nation, and in either

attainment or nonattainment areas (other than the HGB nonattainment areas) are requested for use in the MECT program. Also, as provided in the MECT rule, the DECs used as allowances under the MECT program are not charged the 10 percent environmental contribution because of the use ratios implemented in section 101.356(h).

V. What are EPA's responses to comments received on the proposed action?

EPA's responses to comments submitted by Galveston-Houston Association for Smog Prevention (GHASP), Environmental Defense (Texas Office), the Lone Star Chapter of the Sierra Club, and Public Citizen (Texas Office) on November 4, 2005, are as follows. EPA has summarized the comments below; the complete comments can be found in the DERC administrative record (EPA–R06–OAR–2005–TX–0029). In commenting on the DERC program, the commenters raise no concerns about pollutants other than VOCs (including highly reactive VOCs, or HRVOCs).[1]

Comment 1: There are problems with the inventory of VOC and HRVOC emissions in the HGB nonattainment area.

Response to Comment 1: While EPA acknowledges that there have been past VOC emission inventory problems from sources associated with the petrochemical industry (see our proposed approval of the revisions to the HGB attainment demonstration, 70 FR 58119), EPA believes that the emissions inventory developed by TCEQ for the HGB nonattainment area is an acceptable approach to characterizing the emissions in the HGB nonattainment area. In addition, we are incorporating by reference our responses to comments provided in our approval of the attainment demonstration for the HGB ozone nonattainment area (EPA–R06–OAR–2005–TX–0018). Those responses more specifically address GHASP's concerns regarding the development and use of the imputed inventory, characterization of other VOCs in the inventory, and appropriate emissions monitoring techniques for flares, fugitive emissions, and upsets.

Comment 2: The VOC and HRVOC trading programs use unreliable data, which cannot be replicably measured. There are problems with current methods for measurement of HRVOC and VOC emissions; therefore, the VOC and HRVOC trading programs do not meet EPA's EIP Guidance for quantification.

Response to Comment 2: EPA disagrees. The proposed DERC rule, at 70 FR 58154, describes the basis for EPA's conclusion that the DERC rule satisfies the EIP Guidance criteria on quantifiability, which are found in Chapter 4 ("Fundamental Principles of All EIPs").

Emissions and emission reductions attributed to an EIP are quantifiable if they can be reliably and replicably measured: The source must be able to reliably calculate the amount of emissions and emission reductions from the EIP strategy, and must be able to replicate the calculations. Under the DERC program, sources address the element of quantification by using a quantification protocol that has been approved by TCEQ and EPA. Both agencies have important roles in ensuring these protocols provide reliable and replicable emission measurements. The approved quantification protocols for VOC DERC generation and use are contained in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds. These methods are all reliable and replicable, either because EPA has promulgated regulations or published guidance listing them as appropriate methods for measuring VOC emissions, or because the American Society for Testing and Materials (ASTM) has determined that they are appropriate standard methods. EPA approval is required before an alternate quantification protocol can be used. See section 101.372(1)(C). Examples of the approved quantification methods for VOC DERC generation and use include;

- Test Methods 1–4 (40 CFR 60, Appendix A) for determining flow rates;
- Test Method 18 (40 CFR part 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;
- EPA guidance in "Procedures for Certifying Quantity of Volatile Organic Compounds (VOC) Emitted by Paint, Ink, and Other Coating," EPA–450/3–84–019; and
- Determination of true vapor pressure using ASTM Methods D323–89, D2879, D4953, D5190, or D5191 for the measurement of Reid Vapor pressure.

Comment 3: TCEQ and EPA lack confidence in current methods for measuring emissions. This lack of confidence increases the risks associated with a market-based trading program until the TCEQ is able to reconcile ambient monitoring with industry emission inventories. For example, trading could exacerbate the challenge of identifying the cause of any program failures because comparisons of ambient monitoring trend data to emission inventory data will require consideration of the timing and magnitude of trades.

Response to Comment 3: EPA disagrees. We have discussed above in response to Comments 1 and 2 our conclusion that the methods used for measuring emissions under the DERC program are consistent with EPA policy and guidance, and that the emissions inventory developed by TCEQ is an acceptable approach to characterizing the emissions in the HGB nonattainment area. Sources that generate and use DERCs must notify the TCEQ. The TCEQ is then responsible for certifying that the generation or use strategy is appropriate. Through the certification process TCEQ is made aware of trades before they happen. This advance knowledge of trades could then be applied to the reconciliation process and actually provide additional data instead of being a hindrance.

Comment 4: EPA should find that it is premature for TCEQ to allow trading of unquantifiable emissions of VOC in the HGB nonattainment area. If either the source or the recipient incorrectly estimates the emissions involved in a trade, the region is at risk of a net increase in emissions as a result of the trade. Until refineries and chemical plants are able to routinely quantify their VOC emissions, EPA should not allow trading of these VOC emissions.

Response to Comment 4: EPA disagrees that VOC emissions should be ineligible for trading in the HGB nonattainment area. EPA believes that allowing the petrochemical industry to trade VOC emissions under the DERC rule is appropriate notwithstanding the commenter's concern about emissions estimates, because the DERC program satisfies the EIP Guidance criteria for quantification. For example, sources generating and banking VOC DERCs must either use the approved quantification protocols in Chapter 115 or obtain EPA approval for an alternate quantification method. These protocols

[1] During the comment period, EPA did not receive comments regarding environmental justice and the DERC program. However, during the finalization process we have reevaluated our interpretation of the definition of Environmental Justice as found in Executive Order 12898. In our proposed approval of the DERC program, we stated that "environmental justice concerns arise when a trading program could result in disproportionate impacts on communities populated by racial minorities, people with low incomes, or Tribes." On further review, we believe the following description is more consistent with E.O. 12898: "Environmental justice concerns can arise when a final rule, such as a trading program, could result in disproportionate burdens on particular communities, including minority or low income communities." This revised language does not alter our determination that the DERC program does not raise environmental justice concerns.

will ensure that sources correctly calculate the emission reduction to be banked as a DERC. The source using the banked reduction also must calculate the amount of necessary VOC DERCs using the approved quantification protocols. The TCEQ Executive Director will review and approve each requested DERC use to ensure that sources using DERCs have enough credit to cover their use strategy. After the DERC use has occurred, sources must notify TCEQ of the number of DERCs actually used. Sources that do not have enough DERCs to cover their actual use will be in violation of the DERC program. Additionally, sources that do not obtain sufficient DERCs in advance will be in violation of the program and TCEQ has the authority to pursue enforcement actions. Therefore, EPA believes that sources using the approved quantification protocols will correctly estimate the amount of DERCs generated and used, and we also believe that the program is designed to minimize incorrect emissions estimates. Further, users of VOC DERCs must also purchase and retire an additional ten percent VOC DERCs as an environmental benefit. The ten percent environmental benefit will also help ensure that the trading program will not negatively impact the nonattainment area in which the DERC is generated and used. The ten percent environmental benefit is not applicable to situations where VOC DECs are used in lieu of NO_X MECT allowances. In these situations, the ten percent environmental benefit is replaced with the stringent retirement ratios found in section 101.356(h).

EPA's response to Texas Industry Project (TIP) comments made on November 4, 2005, is as follows:

Comment: TIP supports EPA's proposed approval of the DERC program and urges EPA to finalize its approval as soon as practicable.

Response: EPA acknowledges the support of TIP for our approval of the DERC program.

VI. What does Federal approval of a State regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the federally approved SIP is primarily a State function. However, once the regulation is federally approved, EPA and the public may take enforcement action against violators of these regulations.

VII. Statutory and Executive Order Reviews

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 conditionally approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect State enforceability. Moreover, EPA's disapproval of the submittal does not impose any new 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 conditionally approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely conditionally approves a State rule implementing a Federal standard, 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 SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 6, 2006. 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 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 24, 2006

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, by adding in numerical order a new centered heading "Division 4—Emission Credit Banking and Trading" followed by new entries for sections 101.370, 101.371, 101.372, 101.373, 101.374, 101.376, 101.378, and 101.379.

The additions reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Chapter 101—General Air Quality Rules				
* *	*	*	*	*
Subchapter H—Emissions Banking and Trading				
* *	*	*	*	*
Division 4—Discrete Emission Credit Banking and Trading				
Section 101.370	Definitions	11/10/04	09/06/06 [insert *FR* page number where document begins].	
Section 101.371	Purpose	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 101.372	General Provisions	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 101.373	Discrete Emission Reduction Credit Generation and Certification.	11/10/04	09/06/06 [insert *FR* page number where document begins].	
Section 101.374	Mobile Discrete Emission Reduction Credit Generation and Certification.	11/10/04	09/06/06 [Insert *FR* page number where document begins].	
Section 101.376	Discrete Emission Credit Use	11/10/04	09/06/06 [Insert *FR* page number where document begins].	Subsection 101.376(c)(4) NOT in SIP
Section 101.378	Discrete Emission Credit Banking and Trading.	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
Section 101.379	Program Audits and Reports	12/13/02	09/06/06 [Insert *FR* page number where document begins].	
* *	*	*	*	*

[FR Doc. 06–7414 Filed 9–5–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
September 6, 2006

Part IV

Department of Housing and Urban Development

Public Housing Operating Fund Program; Guidance on Implementation of Asset Management; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Number FR–5099–N–01]

Public Housing Operating Fund Program; Guidance on Implementation of Asset Management

AGENCY: Office of the Assistant Secretary for Public and Indian Housing; HUD.

ACTION: Notice.

SUMMARY: On September 19, 2005, HUD published a final rule entitled, "Revisions to the Public Housing Operating Fund Program," which established a new formula for determining operating subsidies for public housing agencies (PHAs) and requiring that PHAs with 250 or more units convert to asset management. This notice clarifies and provides interim guidance pertaining to various aspects of public housing's conversion to asset management. The interim guidance provided in this notice is intended to assist all PHAs that operate federal public housing. Special provisions are included in the notice to assist small PHAs with less than 250 public housing units that are not subject to asset management conversion. HUD is soliciting public comment on this interim guidance and, based on the comments received, will issue final guidance and commence rulemaking, as appropriate, on the asset-based management requirements. Until such time as final guidance is issued or rulemaking commenced, PHAs should refer to the interim guidance provided by this notice to assist in their conversion to asset-based management.

DATES: *Effective Date:* This notice is effective upon publication.

Comment Due Date: November 6, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hanson, Deputy Assistant Secretary, Departmental Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2000, Washington, DC 20410; telephone 202–475–7949 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On September 19, 2005, (70 FR 54983), HUD published a final rule amending the regulations of the Public Housing Operating Fund Program at 24 CFR part 990, to provide a new formula for distributing operating subsidy to public housing agencies (PHAs) and to establish requirements for PHAs to convert to asset management. On October 24, 2005 (70 FR 61366), HUD published a correction to the September 19, 2005, final rule to clarify that the revised allocation formula will be implemented for calendar year 2007, and adjusting the related dates specified in the final rule to reflect the corrected implementation date. The final rule, developed through negotiated rulemaking conducted in 2004, became effective on November 18, 2005.

Subpart H of the revised part 990 regulations (§§ 990.255 to 990.290) establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. PHAs with fewer than 250 dwelling rental units may elect to transition to asset management, but are not required to do so. PHAs are required to implement property-based management, property-based budgeting, and property-based accounting, which are all defined in the subpart H regulations, which are essential components of asset management.

Additionally, to facilitate and clarify the process of conversion to asset management, the office of Public and Indian Housing (PIH) will be issuing a notice that contains more detailed financial reporting information and guidance to assist PHAs in the near future.

II. This Notice

This notice clarifies and provides interim guidance pertaining to various aspects of public housing's conversion to asset management. The interim guidance provided in this notice is intended to assist all PHAs that operate public housing. Special provisions are included in the notice to assist small PHAs with less than 250 public housing units that are not subject to asset management conversion. Specifically, the notice provides elaboration on the collection and use of fees in the operation and management of properties, the effect of transitioning to asset management on the Public Housing Assessment System (PHAS), property identification, and the connection between asset management and the Capital Fund.

As part of the requirement to convert to asset management, PHAs of 250 or more units must charge a property management fee for the operation of the central office. In addition, PHAs may charge a "fee-for-service" for certain centralized property management services and must prepare property-level financial statements. These and other requirements introduce new financial reporting models; affect the scoring under the PHAS; and raise issues regarding treatment of such fees as "program income." This notice clarifies and provides guidance on key

business decisions related to the implementation of asset management.

HUD is soliciting comments on this notice. Based upon the comments that are received and the experience of PHAs as they begin the conversion to asset management, HUD will issue final guidance and may initiate rulemaking, as may be necessary, to establish more specific requirements. The rulemaking will provide PHAs and the public with an opportunity to comment on any proposed requirements prior to their issuance for effect. Until such time, this notice serves as interim guidance, providing PHAs with an operational framework to assist with their conversion to asset management.

III. Treatment of Fee Income as Non-Program Income

HUD wishes to clarify that reasonable fees charged to properties and programs, as part of the fee-for-service approach, are not considered federal program income for the purposes of 24 CFR part 85. Rather, this fee income is considered local revenue and control over its use is subject only to state or local requirements imposed on individual PHAs.

IV. Excess Cash

The Operating Fund program regulations at § 990.280 establish certain limitations, as well as certain freedoms, on the use of property revenues by PHAs depending on whether a property generates "excess cash." Section 990.255(a) provides that PHAs must manage their properties using an asset management model consistent with management norms of the multifamily management industry. As such, excess cash should be computed using essentially the same method as performed under HUD's multifamily housing programs. The determination of excess cash is based on year-end financial statements using a balance sheet approach.

However, solely for the purposes of the provisions affecting property fungibility (see § 990.280(b)(5)(i)) and payment of an asset management fee (see § 990.280(b)(5)(ii)), a property's excess cash should not be less than one month's operating expenses.

V. Restrictions on Use of Excess Cash for Payment of Central Office Costs

The part 990 regulations establish certain parameters around the use of a property's excess cash (beyond the minimum levels described above). Consistent with § 990.280(c), excess cash may not be used to pay for the operations of the central office cost center. To allow excess cash to fund the operations of the central office cost center would be inconsistent with § 990.280(c), which states that "central office cost centers shall be funded from the property-management fees received from each project, and from the asset management fees to the extent that they are available." It would also contravene a goal of the September 19, 2005, Operating Fund final rule that PHAs should only be permitted to charge a reasonable fee for the operations of the central office.

VI. Reasonableness of Property Management Fees and Asset Management Fees

Section 990.280 provides for the establishment of "reasonable" property management and asset management fees. Accordingly, fees must be reasonable to be considered as excess cash and not treated as program income. Property management fees, which may include a bookkeeping fee, are to be earned monthly for each occupied unit or approved vacancy, as per 24 CFR 990.140 and 990.145, respectively. In accordance with § 990.140, asset management fees are to be earned based on the total number of units under the Annual Contributions Contract (ACC) for each project.

The following guidelines are offered to assist PHAs in determining whether their fees are reasonable. However, PHAs may establish higher fees other than those provided in these guidelines, as provided in section IX of this notice.

A. Property Management Fee

A PHA may charge a reasonable property management fee based on any of the following:

1. The property management fee schedules established for each HUD Multifamily Field Office. Generally, the Office of Multifamily Housing establishes fee ranges for federally subsidized properties that reflect 120 percent of the mean property management fee for profit-motivated properties that are well managed, in good physical condition, and are managed by independent agents with no identity of interest with the owners; or

2. The 80th percentile property management fee paid by all for-profit and unlimited dividend Federal Housing Administration (FHA) properties, by HUD Field Office, excluding such programs as cooperatives and nursing homes.

The property management fee may include a reasonable bookkeeping fee for the property accounting function. The average bookkeeping fee in HUD's multifamily housing programs is about $3.50 per unit per month (PUM) (2004 data). Generally, HUD will consider $7.50 PUM to be a reasonable fee. A higher bookkeeping fee for PHAs reflects higher centralized information technology and human resource costs present in public housing. For financial reporting purposes, this bookkeeping fee, as is standard business practice, is to be presented separately from the property management fee on the PHA's financial statements.

B. Asset Management Fee

HUD will generally consider an asset management fee charged to each property of $10 PUM as reasonable. Asset management fees are based on all units under an ACC. In multifamily housing, the asset management functions of owners are primarily funded through cash flows. This fee amount was determined based on an examination of cash flows in HUD's multifamily properties and the consideration that certain asset management activities in public housing are also recovered through the Capital Fund management fee.

VII. Assignment of Assets to the Central Office Cost Center and Determination of Initial Working Capital

Section 990.280(b) of the final rule requires PHAs to separate all assets and liabilities between the properties and the central office cost center.

A PHA's central office cost center will operate off of fees and other allowable charge-backs (as well as other revenue sources outside the public housing program). Like any other business area, the PHA's central office cost center will need a reasonable amount of working capital in order to perform its functions properly. As such, PHAs, when assigning assets between properties and the central office cost center, may assign to the central office cost center an amount equal to six months of property management fees, including bookkeeping fees, and asset management fees based on all units under ACC, regardless of unit status. This assignment may take place at the time the PHA assigns its initial balance sheet data, when first converting to property-based accounting. To the extent that a PHA does not have sufficient reserves to make such an assignment, a PHA may accrue these amounts. This working capital, like the fees themselves, will not be considered program income.

VIII. Management Fees for Capital Fund, Housing Choice Voucher and Other Public Housing Grant Programs

In programs where it applies, OMB Circular A–87 allows PHAs to use a fee-

for-service in lieu of allocation systems for the reimbursement of overhead costs. HUD encourages this approach for several reasons. First, it simplifies a PHA's accounting systems. Second, it relieves HUD from the requirement to review overhead allocations and to monitor the spending of such funds. Third, it encourages PHAs to become more businesslike, in that any revenue in excess of expenses can be used to support the mission of the PHA (*i.e.*, retained earnings of the central office cost center are not considered program income). The following guidelines are designed to assist PHAs intending to implement a fee-for-service approach in establishing appropriate management fees.

A. Capital Fund Program

A PHA may charge up to a maximum 10 percent of the annual Capital Fund grant as a management fee. While current program rules (§ 968.112) allow PHAs to charge up to 10 percent of the Capital Fund grant for "Administration," these administrative costs must be specifically apportioned and/or documented. Under a fee-for-service system, the PHA may charge a management fee of 10 percent, regardless of actual costs.

B. Housing Choice Voucher Program

HUD encourages the adoption of a fee-for-service methodology for the Housing Choice Voucher Program (HCV). Existing appropriations language restricts the use of administrative fees to activities related to the provision of tenant-based rental activity authorized under Section 8. Costs directly related to the day-to-day operations of the Section 8 program such as salaries of occupancy specialists or rented space for intake activities clearly qualify under this definition while overhead costs require more stringent documentation. For PHAs that elect to use a fee-for-service methodology for its HCV program, HUD will consider a management fee of up to 20% of the administrative fee or up to $12 PUM per voucher leased, whichever is higher, as meeting the requirements of the appropriations act. Under this methodology, PHAs can also charge the HCV program a $7.50 PUM bookkeeping fee for the program accounting function.

PHAs that elect to maintain an allocation system for the recovery of overhead costs under the HCV program cannot charge the HCV program more than the allocated amount and must maintain auditable documentation to support its allocation of costs and their relationship to the provision of tenant-based rental activity authorized under section 8.

C. PHA Administrative Fee for Mixed Finance Development

A reasonable administrative fee amount paid with Public Housing Funds for the mixed finance development is 3% of the total property budget. This amount is intended to cover PHA administrative costs. Alternatively, an administrative fee of up to 6% is considered reasonable provided the housing authority is able to support that the fee is appropriate in accordance with section IX of this notice.

D. Other Public and Indian Housing Grants

If a fee rate has not been established for a grant, a PHA should charge no more than 15 percent of the grant amount as a management fee for other Public Housing grants. Where administrative cost are set through other notices, regulations and existing grant agreements, for example the ROSS program and the annual NOFA requirements, these policies and agreements are controlling.

IX. Demonstrating Fee Reasonableness

If a PHA considers the fees in this notice to be inadequate to address their individual circumstances, a PHA may use data that reflects conditions of the local or national market. HUD is aware that PHAs are diverse, having different resources and constraints. During this period of interim guidance and prior to any rulemaking that may be initiated on fees, PHAs may document, as support, that a fee charged is appropriate for the scope of work, specific circumstances of the property, and local or national market for the services provided. The data used may include fees paid by the PHA for private management of public housing through effective competition. PHAs should be ready to justify the departure from fees in these guidelines upon inquiry from HUD or other interested parties.

In conformity with standard business practices, PHAs are encouraged to maintain supporting documentation explaining the basis of its fees. PHAs are also encouraged to consult with HUD on fees that may depart from this guidance prior to charging the fees. HUD will provide a PHA with it views on the reasonableness of the fees intended to be charged.

X. PHAS Transition Rules

The move to asset management will require HUD to revise the PHAS. Currently, PHAS is an entity-wide assessment system whereas asset management utilizes a property-specific focus. As a result, for the first year of compliance with property-based budgeting and accounting, during which time that PHAs are making organizational changes, the PHA will receive a transition score under the revised PHAS. Incentive awards under the Capital Fund during the time that PHAs receive transition PHAS scores will be based on the PHA's latest PHAS score prior to conversion to asset management.

All PHAs that are or will be classified as troubled will continue to be governed by their memorandum of agreements and other pertinent program rules. Moreover, although PHAs will only receive transition scores, PHAs must continue to comply with all rules associated with the public housing program and must continue to manage with economy and efficiency.

XI. Property Identifications

Under § 990.265, PHAs must identify their property for purposes of asset management. Guidance regarding this exercise was contained in PIH Notice 2006–10 (issued February 3, 2006), entitled "Identification of Projects for Asset Management." These new property identifications will become the new measurement and funding focus of HUD. It is not necessary to revise the property numbers on the ACC. A copy of PIH Notice 2006–10 may be downloaded from *http://www.hudclips.org.*

XII. Inter-Relationship With Capital Fund

Section 990.280(a) provides that property-based budgeting and accounting will be applied to all programs and revenues sources that support properties under the ACC, including the Capital Fund. When a PHA transfers funds from the Capital Fund to the Operating Fund, these funds lose their Capital Fund Program identity and are then governed by all Operating Fund rules. All other Capital Fund eligible activities are bound by the Capital Fund Program rules and the Annual PHA Plan requirements. Additionally, where a PHA may use Capital Funds for "management improvements" and "operations," it may only use those amounts to fund "property" expenses and not expenses of the central office cost center.

XIII. PHAs With Fewer Than 250 Units

For PHAs with fewer than 250 units of public housing and which have not elected to convert to asset management, only Sections X, XI, and XII of this

notice are applicable. HUD included in the September 19, 2005, Operating Fund final rule accommodations to enable PHAs with fewer than 250 units to more easily convert to asset management, such as allowing small PHAs to treat all of their units as one property. Section 990.280 of the Operating Fund program regulations provides for the establishment a "HUD-accepted central office cost center" by PHAs converting to asset management. In the case of a small PHA operating as a single property, the establishment of a separate cost center would be contradictory to the streamlining and cost-efficiency goals of the September 19, 2005, final rule. The establishment of a separate cost center would impose financial and administrative burden on the PHA that, because it is operating as a single property, would not stand to benefit from the coordination and centralization of multiple properties. Accordingly, those PHAs with fewer than 250 units choosing to operate as one property need not establish a central office cost center that is separate from other PHA functions. Those small PHAs with fewer than 250 units that operate as more than one property and choose to convert to asset management, and that believe the establishment of a separate cost center would impose an undue financial or administrative burden, may seek regulatory relief from HUD from the central office cost center requirement; however, during the first two years of property-based budgeting and accounting, these PHAs need not establish a central office cost center.

XIV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements for the Operating Fund Program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0029. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Environmental Impact

This Notice provides operating instructions and procedures in connection with activities under a **Federal Register** document that has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this Notice is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

Dated: August 30, 2006.

Paula O. Blunt,

General Deputy Assistant, Secretary for Public and Indian Housing.

[FR Doc. 06–7475 Filed 8–31–06 4:12 pm]

BILLING CODE 4210–67–P

Federal Register

Wednesday,
September 6, 2006

Part V

Department of Justice

Drug Enforcement Administration

21 CFR Part 1306
Dispensing Controlled Substances for the Treatment of Pain; Notice
Issuance of Multiple Prescriptions for Schedule II Controlled Substances; Proposed Rule

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–286P]

Dispensing Controlled Substances for the Treatment of Pain

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Policy Statement.

SUMMARY: On January 18, 2005, DEA published in the **Federal Register** a solicitation of comments on the subject of dispensing controlled substances for the treatment of pain. Many of the comments that DEA received asked the agency to elaborate on the legal requirements and agency policy relating to this subject. This document provides such information.

DATES: September 6, 2006.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2005, the DEA published in the **Federal Register** a Solicitation of Comments on the subject of dispensing controlled substances for the treatment of pain. 70 FR 2883. Many of the comments sought further information about the legal requirements and agency policy relating to the prescribing of controlled substances for the treatment of pain. DEA stated in the Solicitation of Comments that it would be issuing a document providing such information after reviewing the comments. Accordingly, this policy statement provides practitioners with a recitation of the pertinent principles under the Controlled Substances Act (CSA) and DEA regulations relating to the dispensing of controlled substances for the treatment of pain.

Extent of Abuse in the United States of Controlled Prescription Drugs

The abuse (nonmedical use) of prescription drugs is a serious and growing health problem in this country.[1] As the Administration has announced, recent data indicate that prescription drug abuse, particularly of opioid pain killers, has increased at an alarming rate over the past decade.[2] Statistics published in the National Survey on Drug Use and Health (NSDUH) by the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), demonstrate that prescription drugs account for the second-most commonly abused category of drugs, behind marijuana and ahead of cocaine, heroin, methamphetamine, and other drugs.[3]

One of the areas of concern is the number of persons who have recently begun abusing prescription controlled substances. In its NSDUH Report published in June 2006,[4] SAMHSA states: "In 2004, among persons aged 12 or older, 2.4 million initiated nonmedical use of prescription pain relievers within the past year. This is more than the estimated number of initiates for marijuana (2.1 million) or cocaine (1.0 million)." Overall, according to the NSDUH report: "An estimated 31.8 million Americans have used pain relievers nonmedically in their lifetimes, up from 29.6 million in 2002."

Another source of data presented by SAMHSA is that collected by the Drug Abuse Warning Network (DAWN), which provides national estimates of drug related visits to hospital emergency departments. According to DAWN, for 2004:

- Nearly 1.3 million emergency department (ED) visits in 2004 were associated with drug misuse/abuse. Nonmedical use of pharmaceuticals was involved in nearly half a million of these ED visits.
- Opiates/opioid analgesics (pain killers), such as hydrocodone, oxycodone, and methadone, and benzodiazepines, such as alprazolam and clonazepam, were present in more than 100,000 ED visits associated with nonmedical use of pharmaceuticals in 2004.[5]

A measure of the problem among young people is the 2005 Monitoring the Future (MTF) survey conducted by the University of Michigan.[6] The MTF survey is funded by the National Institute on Drug Abuse (NIDA), a component of the National Institutes of Health (NIH), and measures drug abuse among 8th, 10th, and 12th graders. NIDA stated: "While the 2005 survey showed a continuing general decline in drug use, there are continued high rates of non-medical use of prescription medications, especially opioid pain killers. For example, in 2005, 9.5 percent of 12th graders reported using Vicodin in the past year, and 5.5 percent of these students reported using OxyContin in the past year."[7] In announcing the latest MTF survey results, NIH Director Dr. Elias Zerhouni said that "the upward trend in prescription drug abuse is disturbing."[8]

Purposes and Structure of This Document

One of the chief purposes of this document is to make clear that the longstanding requirement under the law that physicians may prescribe controlled substances only for legitimate medical purposes in the usual course of professional practice should in no way interfere with the legitimate practice of medicine or cause any physician to be reluctant to provide legitimate pain treatment. DEA also wishes to dispel the mistaken notion among a small number of medical professionals that the agency has embarked on a campaign to "target" physicians who prescribe controlled substances for the treatment of pain (or that physicians must curb their legitimate prescribing of pain medications to avoid legal liability).

To achieve these aims, this document begins with a general summary of the relevant legal principles and an explanation of the role of DEA with respect to regulation of controlled substances. The document then addresses specific issues and questions that have been raised on a recurring basis by physicians who seek guidance on the subject of dispensing controlled substances for the treatment of pain.

It should be understood that the legal standard under the Controlled Substances Act (CSA) for prescribing controlled substances to treat pain is the same as that for prescribing controlled substances generally: The prescription must be issued for a legitimate medical purpose by a registered physician acting within the usual course of professional practice. The reason this document focuses on the prescribing of controlled substances for the treatment of pain is that there has been considerable interest among members of the public in having DEA address this specific issue.

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[1] National Institute on Drug Abuse Research Report: Prescription Drug Abuse and Addiction (revised August 2005). (available at *http://www.drugabuse.gov/PDF/RRPrescription.pdf*).

[2] Office of National Drug Control Policy (ONDCP) press release, March 1, 2004.

[3] 2006 Synthetic Drug Control Strategy (available at *http://www.whitehousedrugpolicy.gov/publications/synthetic_drg_control_strat/synth_strat.pdf*).

[4] The NSDUH report is available at *http://www.oas.samhsa.gov/2k6/pain/pain.pdf*. The report extracted data from the 2004 National Survey on Drug Use and Health.

[5] *http://dawninfo.samhsa.gov/files/TNDR07EDvisitsNonmedicalUseForWeb.pdf*.

[6] *http://monitoringthefuture.org*.

[7] NIDA news release, December 19, 2005 (available at *http://www.nida.nih.gov*).

[8] *Id.*

The Statutory Role of DEA in Regulating the Prescribing of Controlled Substances

DEA is the agency within the Department of Justice responsible for carrying out the functions assigned to the Attorney General under the CSA.[9] These functions include enforcing and administering the CSA provisions governing the prescribing, administering, and dispensing of controlled substances. Thus, the scope of DEA's authority is delineated by the extent to which Congress itself regulated controlled substances through the enactment of the CSA and assigned certain functions under the Act to the Attorney General.

While the CSA is one component of the overall regulation of the practice of medicine in the United States,[10] it bears emphasis that the CSA does *not* regulate the practice of medicine as a whole. Therefore, although DEA is the agency responsible for administering the CSA, DEA does *not* act as the Federal equivalent of a State medical board overseeing the general practice of medicine. *State* laws and *State* licensing bodies (such as medical licensing boards) collectively regulate the practice of medicine.[11] In contrast, the scope of the CSA (and therefore role of DEA) is much narrower. The CSA regulates only the segment of medical practice involving the use of controlled substances, and DEA is correspondingly responsible for ensuring that controlled substances are used in compliance with Federal law.

In particular, DEA's role under the CSA is to ensure that controlled substances are prescribed, administered, and dispensed only for legitimate medical purposes by DEA-registered practitioners acting in the usual course of professional practice and otherwise in accordance with the CSA and DEA regulations. Each State also has its own laws (administered by State agencies) requiring that a prescription for a controlled substance be issued only for a legitimate medical purpose by State-licensed practitioners acting in the usual course of professional practice.

There is nothing new in this arrangement of responsibilities between the Federal and State governments. For more than 90 years (starting with the Harrison Narcotic Act of 1914, which was superseded by the CSA in 1970) Federal law has placed certain restrictions on the medical use of federally controlled substances while, at the same time, the States have regulated the practice of medicine generally. In this respect, there has long been a certain amount of overlap between the Federal and State oversight of controlled substances. Beginning in the 1930s and through to the present, States have adopted uniform controlled substance laws that were designed to promote standards that are consistent from State to State and in harmony with Federal law.[12] One such standard that has always been a fundamental part of these uniform State laws is the requirement that controlled substances be dispensed only for a legitimate medical purpose by a practitioner acting in the usual course of professional practice—a requirement first articulated in the Harrison Narcotic Act. Accordingly, it has been the case for more than 70 years that a practitioner who dispenses controlled substances for other than a legitimate medical purpose, or outside the usual course of professional practice, is subject to legal liability under both State and Federal law.[13]

The Meaning of the "Legitimate Medical Purpose" Requirement

As stated above, the core legal standard is that a controlled substance may only be prescribed, administered, or dispensed for a legitimate medical purpose by a physician acting in the usual course of professional practice. This requirement has been construed to mean that the prescription must be "in accordance with a standard of medical practice generally recognized and accepted in the United States."[14] However, Federal courts have long recognized that it is not possible to expand on the phrase "legitimate medical purpose in the usual course of professional practice," in a way that will provide definitive guidelines that address all the varied situations physicians might encounter. As one court explained:

> There are no specific guidelines concerning what is required to support a conclusion that an accused acted outside the usual course of professional practice. Rather, the courts must engage in a case-by-case analysis of evidence to determine whether a reasonable inference of guilt may be drawn from specific facts.[15]

Similarly, another court stated:

> A majority of cases [in which physicians were alleged to have dispensed controlled substances without a legitimate medical purpose] have dealt with facts which were so blatant that a statement of clear-cut criteria in a form useful in other cases would have been superfluous to the decision. We are, however, able to glean from reported cases certain recurring concomitance of condemned behavior.[16]

The foregoing quotation makes a particularly important point: that the types of cases in which physicians have been found to have dispensed controlled substances improperly under Federal law generally involve facts where the physician's conduct is not merely of questionable legality, but instead is a glaring example of illegal activity.

Specific Areas of Interest to the Commenters

The comments DEA received covered a variety of issues related to the dispensing of controlled substances for the treatment of pain. While some of the viewpoints expressed in the comments were in sharp contrast with other viewpoints, taken as a whole, the comments indicate there is significant interest (among those physicians and members of the public who submitted comments) in having DEA address the following topics:

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[9] 21 U.S.C. 871(a); 28 CFR 0.100.

[10] As the United States Supreme Court stated in an early decision under the CSA, "provisions throughout the Act reflect the intent of Congress to confine authorized medical practice within accepted limits." *United States* v. *Moore*, 423 U.S. 122, 141–142 (1975). In *Gonzales* v. *Oregon*, 126 S.Ct. 904, 925 (2006), the Court continued to cite *Moore* with approval and for the proposition that the legitimate medical purpose requirement in the CSA "ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse." The Court further stated: "As a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses." *Id*

[11] Medical specialty boards also play a crucial role in providing information to the public, the government, and the medical profession concerning issues involving specialization and certification in medicine. Specialty boards maintain the quality of medical care in the United States by developing and utilizing professional and educational standards for the evaluation and certification of physician specialists.

[12] The first such uniform act was the Uniform Narcotic Drug Act of 1932, which was eventually adopted by every state. That act was replaced in 1970 by the Uniform Controlled Substances Act, which has been adopted by all but two states (New Hampshire and Vermont).

[13] Congress expressly intended that there would be a dual system of Federal-state regulation of controlled substances by including in the CSA a preemption provision, 21 U.S.C. 903, which reflects that this field of regulation was to be shared by the Federal and state governments. Section 903 states: "No provision of this subchapter shall be construed as indicating an intent on the part of Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State * * *." At the same time, this provision reiterates what is inherent in the supremacy clause of the United States Constitution—that no state may enact a law relating to controlled substances that presents a "positive conflict" with the CSA.

[14] *Moore*, 423 U.S. at 139 (quoting jury instruction).

[15] *United States* v. *August*, 984 F.2d 705, 713 (6th Cir. 1992).

[16] *United States* v. *Rosen*, 582 F.2d 1032 (5th Cir. 1978).

- The extent and consequences of the undertreatment of pain in the United States.
- The extent and consequences of excessive use of opioids to treat nonsevere pain.
- Providing medical and legal guidance on prescribing opioids for pain.
- Elaborating on DEA's policy regarding the investigation of physicians for improper prescribing of controlled substances for pain.
- Having DEA provide reassurance that it is not targeting physicians who prescribe controlled substances for pain.

Each of these topics is addressed in this document.[17]

Comments Regarding the Use of Opioids

The comments reflect two distinct points of emphasis among physicians who specialize in the treatment of pain. For some, of paramount concern is what they describe as the undertreatment of acute and chronic pain. Illustrative of this viewpoint, one commenter has stated:

> The undertreatment of pain is recognized as a serious public health problem that results in a decrease in patients' functional status and quality of life and may be attributed to a myriad of social, economic, political, legal and educational factors, including inconsistencies and restrictions in State pain policies. Circumstances that contribute to the prevalence of undertreated pain include: (1) Lack of knowledge of medical standards, current research, and clinical guidelines for appropriate pain treatment; (2) the perception that prescribing adequate amounts of controlled substances will result in unnecessary scrutiny by regulatory authorities; (3) misunderstanding of addiction and dependence; and (4) lack of understanding of regulatory policies and processes.[18]

One group representing several organizations of physicians who specialize in treating pain commented that it agrees with the following statement made by DEA in the November 16, 2004, Interim Policy Statement published in the **Federal Register** (69 FR 67170): "[C]hronic pain is a serious problem for many Americans. It is crucial that physicians who are engaged in legitimate pain treatment not be discouraged from providing proper medication to patients as medically justified." However, this group expressed the view that the Interim Policy Statement would have "the exact opposite effect" by discouraging some practitioners from properly treating pain. The group therefore urged DEA to readdress the subject in a way that will promote proper dispensing of controlled substances for pain. Similar views were expressed in comments submitted by many other organizations whose missions relate to the treatment of pain. For example, an organization representing health care professionals and patient advocates for those with cancer pain stated: "We respectfully request that the DEA reaffirm its support for areas of the law that support the appropriate use of opioid analgesics for pain control and thereby reduce the fears and uncertainties of health care professionals who treat patients in pain." With regard to this point, NIDA has stated in a recent report: "Many healthcare providers underprescribe opioid pain relievers, such as morphine and codeine, because they overestimate the potential for patients to become addicted." [19]

A few other commenters focused primarily on what they believe is the overprescribing of opioids by some physicians to treat pain. For example, one physician who specializes in pain treatment stated that "the majority of high dose narcotic prescribing is for chronic 'non-malignant' pain," that "the growth of this practice has been exponential," and that "there have been many problems associated with this practice, including the tremendous rise in abuse of prescription drugs in all segments of the population, especially the youth." Along similar lines, another physician commented there has been an "epidemic" of deaths and addiction resulting from the illicit use of prescription narcotics, which, according to this commenter, is due in large part to the prescribing of narcotics to "a much wider class of chronic noncancer patients, including those with moderate subjective ailments such as bursitis, neuralgia, arthritis, headaches, and lower back pain." Another physician stated the large increase in the use of prescription narcotics and deaths related thereto "seem to be coincident with growing advocacy for use of opioid pain medications in chronic benign pain syndromes" and "also coincide with the marketing of expensive new opioid drug preparations which are aggressively promoted by the drug manufacturers, and with the growth of professional and accrediting organizations that seem determined to promote the use of opioid pain medications."

The two distinct areas of emphasis reflected in the comments—the commenters' views about the undertreatment of pain and what some perceive as overprescribing of opioids for nonsevere ailments—are not necessarily mutually exclusive. To the contrary, the comments taken collectively suggest that there may be some physicians who "undertreat" pain and others who improperly prescribe opioids ostensibly for the treatment of pain. (DEA presumes, however, that most physicians provide appropriate amounts of pain medication.) The comments also reflect that there is a lack of consensus among physicians as to all the circumstances that warrant the use of opioids to treat pain.[20] On this latter point, one physician who specializes in pain treatment commented: "The treatment of chronic nonmalignant pain syndromes with narcotic medications remains a controversial area with the mainstream medical community." This commenter suggested there is a need for randomized, double-blind, controlled clinical trials to fully evaluate this issue. As explained below, it is not DEA's role to issue medical guidelines specifying patient characteristics that warrant the selection of a particular opioid or other medication or regimen for the treatment of pain.

Requests for Guidance on Treating Patients for Pain

Many commenters expressed the view that it would be beneficial if physicians had a single document providing clear guidelines on the use of controlled substances for the treatment of pain. Some believe such a document would remedy their concerns about the undertreatment of pain by giving

[17] Also of chief concern to commenters was the issuance by physicians of multiple schedule II prescriptions. DEA addressed this issue in detail in the August 26, 2005, **Federal Register** document titled "Clarification of Existing Requirements Under the Controlled Substances Act for Prescribing Schedule II Controlled Substances." 70 FR 50403. In addition, DEA is today publishing in the **Federal Register** a notice of proposed rulemaking (Docket No. DEA–287N) that would revise the DEA regulations to allow for the issuance of multiple schedule II prescriptions under certain circumstances.

[18] Federation of State Medical Boards of the United States, Model Policy for the Use of Controlled Substances for the Treatment of Pain (2004).

[19] National Institute on Drug Abuse Research Report: Prescription Drug Abuse and Addiction (available at *http://www.drugabuse.gov/PDF/RRPrescription.pdf*).

[20] One indication of the lack of consensus among physicians on this point is the following. The American Medical Association, in a published policy statement (D–120.999) ("Use of opioids in chronic noncancer pain"), states: "Further controlled trials [should] be conducted on opioid therapy in patients with chronic noncancer pain in an effort to identify best practice with regard to selection of both medication and treatment regimens [to] identify patient characteristics that predict opioid responsiveness [and to] provide support for guidelines on appropriate precautions, contraindications, and the degree of monitoring required in such patients."

physicians assurance that they can avoid scrutiny by Federal and State regulatory authorities as long as they follow those guidelines when prescribing opioids. More specifically, it has been suggested that these guidelines should take the form of a series of questions and answers to be adopted by DEA. Among the questions that have been proposed for inclusion in these guidelines are:

- What should be the goals of pain management?
- How can a clinician assess a patient's pain?
- When should a primary care physician turn to a pain medicine specialist to manage a patient's pain?
- How are opioids used to manage chronic pain?

It is certainly appropriate for physicians and medical oversight boards to explore these types of questions. However, for the following reasons, it is not appropriate for DEA to address these questions in the form of a guidance document (or to endorse such a guidance document prepared by others).

First, one cannot provide an exhaustive and foolproof list of "dos and don'ts" when it comes to prescribing controlled substances for pain or any other medical purpose. As discussed above, the fundamental principle under both Federal and State law is that a controlled substance must be dispensed by a physician for a legitimate medical purpose in the usual course of professional practice. Throughout the 90 years that this requirement has been a part of United States law, the courts have recognized that there are no definitive criteria laying out precisely what is legally permissible, as each patient's medical situation is unique and must be evaluated based on the entirety of the circumstances. DEA cannot modify or expand upon this longstanding legal requirement through the publication or endorsement of guidelines.

Second, as stated earlier in this document, DEA's authority under the CSA is not equivalent to that of a State medical board. DEA does not regulate the general practice of medicine. The responsibility for educating and training physicians so that they make sound medical decisions in treating pain (or any other ailment) lies primarily with medical schools, post-graduate training facilities, State accrediting bodies, and other organizations with medical expertise. Some states also have continuing medical education requirements for licensing. Physicians also keep abreast of the latest findings by reading peer-reviewed articles published in medical and scientific journals. DEA, however, has neither the legal authority nor the expertise to provide medical training to physicians or issue guidelines that constitute advice on the general practice of medicine.[21]

For these reasons, DEA is not proposing any medical guidelines on prescribing controlled substances for the treatment of pain.

Whether To Form an Advisory Committee

Several members of the public have suggested that DEA form an advisory committee, panel, or working group to develop and publish guidelines on the use of controlled substances for the treatment of pain. An agency may not utilize an advisory committee (or panel or working group) to provide advice to the agency or prepare a document for (or in conjunction with) the agency unless all of the procedural requirements of the Federal Advisory Committee Act (FACA) are satisfied.[22] Compliance with FACA ensures, among other things, that persons selected by the agency to serve on the committee constitute a balanced membership that represents a fair cross-section of viewpoints.

If DEA were to conclude that compelling considerations necessitated the formation of an advisory committee subject to FACA, the agency would seek to do so in accordance with the law and Executive Branch directives.[23] At this time, DEA does not believe that such considerations exist warranting the formation of such an advisory committee to address the dispensing of controlled substances for the treatment of pain. However, there are other means available to an agency to obtain valuable public input. Within the bounds permissible by law, DEA remains firmly committed to obtaining the ongoing input of the medical community, law enforcement officials, and other interested members of the public. Toward this end, the agency welcomes written submissions from the public on this document and will continue to explore other legally appropriate means of hearing the views of interested members of the public.

The Number of Physicians Who Prescribe Controlled Substances in Violation of the CSA Is Extremely Small and There Is No DEA "Crackdown" on Physicians

DEA recognizes that the overwhelming majority of American physicians who prescribe controlled substances do so for legitimate medical purposes. In fact, the overwhelming majority of physicians who prescribe controlled substances do so in a legitimate manner that will never warrant scrutiny by Federal or State law enforcement officials. Contrary to the impression of some commenters, DEA has not modified its criteria for investigating physicians or increased its emphasis on physicians as part of the agency's overall mission. *In any given year, including 2005, fewer than one out of every 10,000 physicians in the United States (less than 0.01 percent) lose their controlled substance registrations based on a DEA investigation of improper prescribing.*[24] This figure alone should correct any mistaken notions about a supposed DEA "crackdown" on physicians. Moreover, as mentioned above, the responsibility for monitoring and preventing controlled substance abuse is shared by State and Federal governments. Even in the rare cases where a physician loses his/her DEA registration for improper prescribing, it is often State officials—not DEA—who initiate the investigations.

DEA always had, and continues to have, a legal obligation to investigate the extremely small fraction of physicians who use their DEA registration to commit criminal acts or otherwise violate the CSA. DEA takes this obligation seriously because even just one physician who uses his/her DEA registration for criminal purposes can cause enormous harm. In the words of one commenter: "It takes only a few untrained or unscrupulous physicians to create large pockets of addicts." But DEA takes just as seriously its obligation to ensure that there is no interference with the dispensing of controlled

[21] As stated above, DEA does have the authority and the expertise to investigate and determine whether a prescription for a controlled substance was issued for a legitimate medical purpose in the usual course of professional practice within the meaning of the CSA and DEA regulations.

[22] As set forth in FACA, a charter must be enacted before an advisory committee can meet. 5 U.S.C. App. 2 § 9(c). For an agency committee, the charter must be filed with the head of the agency, the appropriate Senate and House of Representatives standing committees, the Library of Congress, and the General Services Administration Secretariat, 41 CFR 102–3.70. The charter must contain certain information, including, among other things, the following: the advisory committee's official designation; objectives and the scope of the advisory committee's activity; the time necessary to carry out the advisory committee's purposes; a description of the duties for which the advisory committee is responsible; the estimated annual costs; the estimated frequency of the advisory committee's meetings; and the planned termination date.

[23] *See* Executive Order 12838 ("Termination and Limitation of Federal Advisory Committees").

[24] The majority of cases in which physicians lose their DEA registrations result from actions by state medical boards to revoke or suspend the physicians' state medical licenses.

substances to the American public in accordance with the sound medical judgment of their physicians. It would be a disservice to many patients if exaggerated statements regarding the likelihood of a DEA investigation resulted in physicians mistakenly concluding that they must scale back their patients' use of controlled substances to levels below that which is medically appropriate.

Furthermore, DEA does not apply a greater level of scrutiny to the prescribing of controlled substances to treat pain as compared to other ailments. Regardless of the ailment, DEA applies evenhandedly the requirement that a controlled substance be prescribed for a legitimate medical purpose in the usual course of professional practice. The idea that prescribing opioids to treat pain will trigger special scrutiny by DEA is false.

Types of Cases in Which Physicians Have Been Found To Have Prescribed or Dispensed Controlled Substances for Other Than a Legitimate Medical Purpose or Outside the Usual Course of Professional Practice

Bearing in mind that there are no criteria that will address every conceivable instance of prescribing, the following examples of cases are provided to explain how Federal courts and DEA have applied the requirement that a controlled substance be dispensed for a legitimate medical purpose in the usual course of professional practice.

Application of the Requirement by Federal Courts

As noted above, the Supreme Court recently stated, in *Gonzales* v. *Oregon*, that the legitimate medical purpose requirement in the CSA "ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse." [25] The Court further stated: "As a corollary, the provision also bars doctors from peddling to patients who crave the drugs for those prohibited uses." [26]

Consistent with those views, some years ago, the United States Court of Appeals for the Fifth Circuit summarized the reported cases in which physicians had been found to have violated the requirement that a prescription for a controlled substance be issued only for a legitimate medical purpose in the usual course of professional practice. In this decision, *United States* v. *Rosen*, 582 F.2d 1032 (5th Cir. 1978), the court looked at the case law and found the following recurring patterns indicative of diversion and abuse:

(1) An inordinately large quantity of controlled substances was prescribed.
(2) Large numbers of prescriptions were issued.
(3) No physical examination was given.
(4) The physician warned the patient to fill prescriptions at different drug stores.
(5) The physician issued prescriptions knowing that the patient was delivering the drugs to others.
(6) The physician prescribed controlled drugs at intervals inconsistent with legitimate medical treatment.
(7) The physician involved used street slang rather than medical terminology for the drugs prescribed.
(8) There was no logical relationship between the drugs prescribed and treatment of the condition allegedly existing.
(9) The physician wrote more than one prescription on occasions in order to spread them out.

The same fact patterns listed by the *Rosen* court remain prevalent today among the cases in which physicians have been found to have improperly prescribed controlled substances. This does not mean that the existence of any of the foregoing factors will automatically lead to the conclusion that the physician acted improperly. Rather, each case must be evaluated based on its own merits in view of the totality of circumstances particular to the physician and patient. For example, what constitutes "an inordinately large quantity of controlled substances" (factor (1) listed by the *Rosen* court) can vary greatly from patient to patient. A particular quantity of a powerful schedule II opioid might be blatantly excessive for the treatment of a particular patient's mild temporary pain, yet insufficient to treat the severe unremitting pain of a cancer patient.

Again, rather than focusing on any particular factor, it is critical to bear in mind that (i) the entirety of circumstances must be considered, (ii) the cases in which physicians have been found to have prescribed controlled substances improperly typically involve facts that demonstrate blatant criminal conduct, and (iii) the percentage of physicians who prescribe controlled substances improperly (or are investigated for doing so) is extremely small.

Application of the Requirement by DEA

Any final decision by DEA to revoke or deny a DEA registration is published in the **Federal Register**. The following are three examples from 2005 in which DEA revoked physicians' DEA registrations for unlawfully prescribing or dispensing controlled substances. (The complete final orders are published in the **Federal Register** and are available online.)

- *Robert A. Smith, M.D.* (70 FR 33207)—Dr. Smith gave one patient seven to ten prescriptions of OxyContin per visit on a weekly basis. The prescriptions were written in the patient's name as well as the names of the patient's father and her fiancé. Each visit, the patient paid Dr. Smith a $65 fee for the office visit plus an additional $100 for the fraudulent prescriptions. Dr. Smith also asked the patient for sexual favors during office visits. The patient declined, but, as a substitute, paid another woman $100 to perform a sexual act on Dr. Smith. Dr. Smith's office assistant also provided the patient with blank prescriptions, in return for which the office assistant demanded from the patient $40 and OxyContin tablets.

Another patient would give Dr. Smith a list of fictitious names and types of controlled substances he desired, and Dr. Smith would issue three prescriptions under each name, usually for Percocet, OxyContin, and Xanax, at the same time. Dr. Smith issued between nine and fifteen fraudulent prescriptions per visit and received $100 for each set of three prescriptions. The patient then sold the prescriptions to a third party who, in turn, sold the drugs on the street, all with the knowledge of Dr. Smith.

Another individual visited Dr. Smith three times in less than a three-week period, obtaining fraudulent prescriptions each time. The individual paid Dr. Smith $500 for 15 prescriptions for Xanax, OxyContin, and Percocet, which were written under five different fictitious patient names.

- James S. Bischoff, M.D. (70 FR 12734)—Dr. Bischoff took a 16-year-old high school student to an out-of-town physician specialist for emergency medical treatment after the boy's hand was cut in an accident. When the specialist did not recommend treatment with a controlled substance, Dr. Bischoff wrote the boy a prescription for 100 OxyContin, which Dr. Bischoff personally took to a pharmacy to be filled. Dr. Bischoff delivered only 20 tablets to the boy, unlawfully diverting the remaining 80 tablets. Around the same time, Dr. Bischoff wrote another prescription in the boy's name for 120 Adderall tablets. Dr. Bischoff also filled this prescription himself at a pharmacy but never delivered the tablets to the boy. Later, Dr. Bischoff wrote another prescription in the name of the boy for 120 Adderall tablets. The boy's stepmother learned that the boy was taking the medication only after she

[25] 126 S.Ct. at 925.
[26] *Id.*

discovered the bottle a couple of weeks later. She then checked with the pharmacy and discovered that Dr. Bischoff had written and personally filled multiple fraudulent prescriptions for controlled substances in the names of the boy's family members, telling pharmacists that he was a close friend and that the purported patients were too busy to get to the pharmacy. In addition, Dr. Bischoff ordered approximately 46,000 dosage units of schedule III and IV controlled substances from a supplier, and he was unable to account for 32,000 dosage units.

• *John S. Poulter, D.D.S.* (70 FR 24628)—Local law enforcement authorities were called after Dr. Poulter was observed parked in front of a convenience store injecting himself with Demerol. Dr. Poulter failed a field sobriety test, admitted to injecting himself with Demerol, and later pleaded guilty to State felony charges of unlawful possession of a controlled substance. The plea was held in abeyance for three years pending Dr. Poulter's successful completion of a monitoring program for impaired professionals. In addition to the criminal proceedings, his State professional licensing board took action based on the Demerol incident and several instances of improper use of Fentanyl. Dr. Poulter entered into a five-year probationary agreement with the State board, agreeing to abstain from personal use of mood-altering substances. Before completing these probationary periods, Dr. Poulter was involved in an automobile accident in which he drove his car off the road after having injected himself with Fentanyl and Demerol. Responding officers and medical personnel found him "incoherent and very confused," and there were visible needle marks on his arm and hands. A search of the automobile revealed a used syringe and a plastic container holding Demerol and Fentanyl.

These three recent cases provide illustrations of some of the most common behaviors that result in loss of DEA registration: Issuing prescriptions for controlled substances without a bona fide physician-patient relationship; issuing prescriptions in exchange for sex; issuing several prescriptions at once for a highly potent combination of controlled substances; charging fees commensurate with drug dealing rather than providing medical services; issuing prescriptions using fraudulent names; and self-abuse by practitioners.

In another recent case, *United States* v. *Singh*, 390 F.3d 168 (2d Cir. 2004), a physician who claimed to specialize in pain management was convicted following a jury trial of improperly prescribing a controlled substance in violation of the CSA. The court of appeals, which upheld the conviction, described the nature of the physician's prescribing practice as follows (*id.* at 176):

> Singh developed a scheme that enabled nurses to see patients alone, to issue prescriptions for schedule II controlled substances, and to bill for such services. He and the other physicians would pre-sign the triplicate forms and provide them to non-physician personnel to use during patient visits. These employees, although not trained or legally authorized to do so, filled in all the required prescription information—drug type, dosage, and quantity—and provided the prescriptions to the patients.
>
> It appears that the physicians at the practice, including Singh, signed entire books of triplicate prescription forms in blank without even knowing the identities of the patients to whom the prescriptions would be issued or the nature or dosage of the drug to be prescribed. * * *
>
> Data extracted from Singh's office records revealed that the nurses issued prescriptions for at least 76,000 tablets of schedule II controlled substances when Singh was not present in the practice suite.

Thus, *Singh* is another example of a prosecution based on blatant criminal conduct by a physician, and it should cause no concern for any legitimate pain specialist or other physician who properly prescribes controlled substances.

Commencement of Investigations

On the subject of when DEA might commence an investigation of possible improper prescribing of controlled substances, several commenters sought elaboration on DEA's statements in the November 16, 2004 Interim Policy Statement. In that document, DEA stated, among other things:

> [I]t is a longstanding legal principle that the Government "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States* v. *Morton Salt Co.*, 338 U.S. 632, 642–643 (1950). It would be incorrect to suggest that DEA must meet some arbitrary standard or threshold evidentiary requirement to commence an investigation of a possible violation of the [CSA].

The foregoing is a correct statement of the law, and DEA is not unique in this regard. All law enforcement agencies—Federal and State—have long been governed by this same principle. The reason DEA mentioned this longstanding maxim in the Interim Policy Statement was to correct an earlier publication attributed to DEA that embodied a contrary view.

While those who commented on the subject of investigations generally acknowledged that DEA had properly stated the law, some asserted that, by doing so, the agency might have caused some physicians to fear the prospect of being investigated and thereby discouraged them from providing proper pain treatment. DEA believes, however, physicians will understand that correctly stating the legal standard which has historically applied to regulatory agencies is no cause for alarm. DEA does not use its investigatory authority in an arbitrary manner. Further, as DEA has repeatedly stated in this document and elsewhere, there is no "crackdown" or increased emphasis on investigating physicians, and the statistics bear that out. In 2005, as in prior years, only a tiny fraction of physicians (less than one in ten thousand) lost their registration based on a DEA investigation of improper prescribing of controlled substances.

One commenter suggested DEA should announce it will only commence an investigation when it has evidence that the physician is prescribing in a manner outside of accepted medical standards. To adopt such a standard would conflict with longstanding law, as previously noted. In addition, from a practical perspective, such a standard would be impossible to apply because the agency cannot know—prior to commencing an investigation—whether the activity was proper or improper. Gathering preliminary information is essential to determining whether a full-scale investigation is—or is not—warranted. By stating the governing law, however, DEA is not suggesting that it investigates every instance of prescribing in order to rule out the possibility of illegal activity. To the contrary, the agency recognizes that nearly every prescription issued by a physician in the United States is for a legitimate medical purpose in the usual course of professional practice.

Other Recurring Questions

What is fueling the recent increase in prescription drug abuse?

There are a variety of factors that may be contributing to the increase in prescription drug abuse. The Director of NIDA recently testified before Congress:

> The recent increase in the extent of prescription drug abuse in this country is likely the result of a confluence of factors, such as: Significant increases in the number of prescriptions; significant increases in drug availability; aggressive marketing by the pharmaceutical industry; the proliferation of illegal Internet pharmacies that dispense these medications without proper prescriptions and surveillance; and a greater

social acceptability for medicating a growing number of conditions.[27]

• *Increased availability of prescription drugs and sharing among family and friends*—The United States Government Accountability Office (GAO) published a report in 2003 on the abuse of the most prescribed brand name narcotic medication for treating moderate-to-severe pain.[28] The report states: "The large amount of [the drug] available in the marketplace may have increased opportunities for abuse and diversion. Both DEA and [the manufacturer of the drug] have stated that an increase in a drug's availability in the marketplace may be a factor that attracts interest by those who abuse and divert drugs."

The 2006 Synthetic Drug Control Strategy states:

> Preliminary data suggest the most common way in which controlled substance prescriptions are diverted may be through friends and family. For example, a person with a lawful and medical need for some amount of a controlled substance uses only a portion of the prescribed amount. Then a family member complains of pain, and the former patient shares excess medication. Alternatively, for a family member addicted to controlled prescription drugs, the mere availability of unused controlled substance prescriptions in the house may prove to be an irresistible temptation.

• *Ease of access via the Internet*—It is becoming increasingly easy for persons of any age to obtain controlled substances illegally by means of the Internet. Numerous Web sites based in the United States and abroad sell controlled substances to anyone willing and able to provide a credit card number. Some of these Web sites do not require a prescription. Others will provide the buyer with an illegitimate prescription simply by having the buyer fill out an online questionnaire without seeing a physician. As the 2006 Synthetic Drug Control Strategy states, "the anonymity of the Internet and the proliferation of Web sites that facilitate illicit transactions for controlled substance prescription drugs have given drug abusers the ability to circumvent the law as well as sound medical practice."

• *Improper prescribing*—As the 2006 Synthetic Drug Control Strategy states: "The overwhelming majority of prescribing in America is conducted responsibly, but the small number of physicians who overprescribe controlled substances—carelessly at best, knowingly at worst—help supply America's most widespread drug addiction problem. Although the problem exists, the number of physicians responsible for this problem is a very small fraction of those licensed to prescribe controlled substances in the United States."

• *Drug formulation and marketing*—One of the recommendations in the 2006 Synthetic Drug Control Strategy is to "[c]ontinue to support the efforts of firms that manufacture frequently diverted pharmaceutical products to reformulate their products so as to reduce diversion and abuse," and to "[e]ncourage manufactures to explore methods to render * * * pain control products, such as OxyContin, less suitable for snorting or injection." Whether the marketing of certain opioids has contributed to abuse and diversion has also been an area of discussion.[29]

What are some of the common methods and sources of diversion?

Diversion of prescription drugs containing controlled substances occurs on a variety of levels. Some controlled substances are stolen directly from manufacturers and distributors. Diversion also occurs at the retail level with thefts from, and robberies of, pharmacies. In one survey of over 1,000 pharmacists nationwide, 28.9 percent reported that they had experienced a theft or robbery at their pharmacies within the past five years.[30] A very small percentage of physicians also contribute to the problem of diversion by intentionally, or unintentionally, providing controlled substances to those who are themselves drug abusers or who sell the drugs for profit.

Prescription fraud is another common source of diversion. This occurs whenever prescriptions for controlled substances are obtained under false pretenses, including when prescriptions are forged or altered, or when someone falsely claiming to be a physician calls in the prescription to a pharmacy.

"Doctor shopping" is another traditional method by which diversion occurs. Some drug abusers visit multiple physicians' offices and falsely present complaints in order to obtain controlled substances.

What are the potential signs to a physician that a patient might be seeking drugs for the purpose of abuse or diversion?

Many physicians have requested a list of the possible indicators that a patient might be seeking controlled substances for the purpose of diversion or abuse. DEA has provided this type of list in various publications over the years. While not an exhaustive list, the following are some of the common behaviors that might be an indication the patient is seeking drugs for the purpose of diversion or abuse:

- Demanding to be seen immediately;
- Stating that s/he is visiting the area and is in need of a prescription to tide her/him over until returning to the local physician;
- Appearing to feign symptoms, such as abdominal or back pain, or pain from kidney stones or a migraine, in an effort to obtain narcotics;
- Indicating that nonnarcotic analgesics do not work for him/her;
- Requesting a particular narcotic drug;
- Complaining that a prescription has been lost or stolen and needs replacing;
- Requesting more refills than originally prescribed;
- Using pressure tactics or threatening behavior to obtain a prescription;
- Showing visible signs of drug abuse, such as track marks.

What are the general legal responsibilities of a physician to prevent diversion and abuse when prescribing controlled substances?

In each instance where a physician issues a prescription for a controlled substance, the physician must properly determine there is a legitimate medical purpose for the patient to be prescribed that controlled substance and the physician must be acting in the usual course of professional practice.[31] This is the basic legal requirement discussed

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[27] The NIDA testimony, which was presented July 26, 2006, before the House Subcommittee on Criminal Justice, Drug Policy, and Human Resources, Committee on Government Reform, appears in full on NIDA's Web site at *http://www.drugabuse.gov/Testimony/7-26-06Testimony.html.*

[28] The GAO report, "Prescription Drugs OxyContin Abuse and Diversion and Efforts to Address the Problem," GAO–04–110 (December 2003), is available at *http://www.gao.gov/new.items/d04110.pdf.*

[29] A detailed discussion of this issue is contained in the above-referenced GAO report, "Prescription Drugs OxyContin Abuse and Diversion and Efforts to Address the Problem." The manufacturer's statement to Congress in response to the GAO report is available at *http://reform.house.gov/UploadedFiles/9-13-2005%20Purdue%20Testimony.pdf.* In 2001, FDA announced that it had worked with the manufacturer of OxyContin to make changes to the drug's labeling, including a "black box warning," which FDA states is "intended to lessen the chance that OxyContin will be prescribed inappropriately for pain of lesser severity than the approved use or for other disorders or conditions inappropriate for a schedule II narcotic." FDA Talk Paper: "FDA Strengthens Warnings for OxyContin" (July 25, 2001), available at *http://www.fda.gov/bbs/topics/ANSWERS/2001/ANS01091.html.*

[30] The survey was conducted by the National Center on Addiction and Substance Abuse at Columbia University, which published the results in a comprehensive report on prescription drug abuse entitled: "Under the Counter: The Diversion and Abuse of Controlled Prescription Drugs in the U.S." (available at *http://www.casacolumbia.org/absolutenm/articlefiles/380-under_the_counter_-_diversion.pdf).*

[31] 21 CFR 1306.04(a); *United States* v. *Moore, supra.*

above, which has been part of American law for decades. Moreover, as a condition of being a DEA registrant, a physician who prescribes controlled substances has an obligation to take reasonable measures to prevent diversion.[32] The overwhelming majority of physicians in the United States who prescribe controlled substances do, in fact, exercise the appropriate degree of medical supervision—as part of their routine practice during office visits—to minimize the likelihood of diversion or abuse. Again, each patient's situation is unique and the nature and degree of physician oversight should be tailored accordingly, based on the physician's sound medical judgment and consistent with established medical standards.

What additional precaution should be taken when a patient has a history of drug abuse?

As a DEA registrant, a physician has a responsibility to exercise a much greater degree of oversight to prevent diversion and abuse in the case of a known or suspected addict than in the case of a patient for whom there are no indicators of drug abuse. Under no circumstances may a physician dispense controlled substances with the knowledge they will be used for a nonmedical purpose or that they will be resold by the patient. Some physicians who treat patients having a history of drug abuse require each patient to sign a contract agreeing to certain terms designed to prevent diversion and abuse, such as periodic urinalysis. While such measures are not mandated by the CSA or DEA regulations, they can be very useful.

Can a physician be investigated solely on the basis of the number of tablets prescribed for an individual patient?

The Supreme Court has long recognized that an administrative agency responsible for enforcing the law has broad investigative authority,[33] and courts have recognized that prescribing an "inordinately large quantity of controlled substances" can be evidence of a violation of the CSA.[34] DEA therefore, as the agency responsible for administering the CSA, has the legal authority to investigate a suspicious prescription of any quantity.

Nonetheless, the amount of dosage units per prescription will never be a basis for investigation for the overwhelming majority of physicians. As with every other profession, however, among the hundreds of thousands of physicians who practice medicine in this country in a manner that warrants no government scrutiny are a handful who engage in criminal behavior. In rare cases, it is possible that an aberrant physician could prescribe such an enormous quantity of controlled substances to a given patient that this alone will be a valid basis for investigation. For example, if a physician were to prescribe 1,600 (sixteen hundred) tablets per day of a schedule II opioid to a single patient, this would certainly warrant investigation as there is no conceivable medical basis for anyone to ingest that quantity of such a powerful narcotic in a single day. Again, however, such cases are extremely rare. The overwhelming majority of physicians who conclude that use of a particular controlled substance is medically appropriate for a given patient should prescribe the amount of that controlled substance which is consistent with their sound medical judgment and accepted medical standards without concern that doing so will subject them to DEA scrutiny.

Can methadone be used for pain control?

Methadone, a schedule II controlled substance, has been approved by the FDA as an analgesic. While a physician must have a separate DEA registration to dispense methadone for maintenance or detoxification, no separate registration is required to prescribe methadone for pain. However, in a document entitled "Methadone-Associated Mortality: Report of a National Assessment," SAMHSA recently recommended that "physicians need to understand methadone's pharmacology and appropriate use, as well as specific indications and cautions to consider when deciding whether to use this medication in the treatment of pain." [35] This recommendation was made in light of mortality rates associated with methadone.

Obtaining Further Input From Physicians and Other Health Care Professionals

In developing policies and rules relating to the use of controlled substances in the treatment of pain, DEA is firmly committed to obtaining input on an ongoing basis from physicians and other health care professionals authorized to prescribe and dispense controlled substances, as well the views of Federal and State agencies, professional societies, and other interested members of the public. DEA welcomes the written comments that any such persons might wish to submit in response to this document. DEA will also continue to evaluate whether it would be beneficial to obtain the additional views of physicians through in-person meetings, to the extent permissible under FACA.

Dated: August 28, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–14517 Filed 9–5–06; 8:45 am]

BILLING CODE 4410–09–P

[32] 21 U.S.C. 823(f).

[33] *Morton Salt*, 338 U.S. at 642–643 ("an administrative agency charged with seeing that the laws are enforced" may "investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.").

[34] *United States* v. *Rosen*, 582 F.2d at 1036.

[35] SAMHSA Publication No. 04–3904. Available at *http://dpt.samhsa.gov/reports/index.htm.*

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1306

[Docket No. DEA–287N]

RIN 1117–AB01

Issuance of Multiple Prescriptions for Schedule II Controlled Substances

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: DEA is hereby proposing to amend its regulations to allow practitioners to provide individual patients with multiple prescriptions, to be filled sequentially, for the same schedule II controlled substance, with such multiple prescriptions having the combined effect of allowing a patient to receive over time up to a 90-day supply of that controlled substance. DEA is requesting public comment on this proposed rule.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before November 6, 2006.

ADDRESSES: Please submit comments, identified by "Docket No. DEA–287N," by one of the following methods:

1. Regular mail: Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL.
2. Express mail: DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301.
3. E-mail comments directly to agency: *dea.diversion.policy@usdoj.gov.*
4. Federal eRulemaking portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Anyone planning to comment should be aware that all comments received before the close of the comment period will be made available in their entirety for public inspection, including any personal information submitted. For those submitting comments electronically, DEA will accept attachments only in the following formats: Microsoft Word; WordPerfect; Adobe PDF; or Excel.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537; Telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION:

I. Background

On August 26, 2005, DEA published in the **Federal Register** a "Clarification Of Existing Requirements Under The Controlled Substances Act For Prescribing Schedule II Controlled Substances." 70 FR 50408. That document addressed the situation of patients who have been receiving prescriptions for schedule II controlled substances for legitimate medical purposes (for example, for the treatment of severe pain or attention deficit hyperactivity disorder (ADHD)) and have settled into a routine of seeing their physician once every three months. The document was intended to address the concerns of many such patients who were under the mistaken impression that, because of DEA's November 16, 2004, Interim Policy Statement (69 FR 67170), they had to begin seeing their physicians every month to obtain their schedule II prescriptions. As the August 26, 2005, clarification document noted: "DEA wishes to make clear that the Interim Policy Statement did *not* state that such patients must visit their physician's office every month to pick up a new prescription." The clarification document further explained some of the possible ways in which, under appropriate circumstances, patients can continue to receive schedule II prescriptions without visiting their physicians' offices every month.[1]

Following the publication of the clarification document, DEA received further comments from the public indicating that many physicians, patients, and pharmacists believe it would still be beneficial to allow physicians to provide individual patients with multiple prescriptions for the same schedule II controlled substance at a single office visit. Those who have commented in favor of allowing this practice suggest that under this approach, the physician would write instructions on each prescription indicating the earliest date on which it could be filled. In this manner, these commenters suggested, a physician should be allowed to authorize up to a 90-day supply of schedule II controlled substances at a single office visit. Other physicians who commented indicated that they do typically see their patients at least once every 30 days for the treatment of pain but that they too believe they should be permitted to issue multiple prescriptions over a shorter time frame (for example, three prescriptions each for a 10-day supply). Physicians who sought to issue multiple prescriptions in this latter manner suggested that doing so would facilitate greater physician oversight and minimize the likelihood of diversion and abuse.

[1] The clarification document stated, among other things, that a lawfully issued prescription may be mailed by the physician to the patient or pharmacy.

II. Legal Considerations

Whether it is legally permissible for a physician to provide a patient with multiple prescriptions for a schedule II controlled substance in the manner described above depends on the interpretation given the provision of the Controlled Substances Act (CSA) governing prescriptions, 21 U.S.C. 829. Subsection 829(a) states: "No prescription for a controlled substance in schedule II may be refilled." By comparison, subsection 829(b) states that, for a schedule III or IV controlled substance, a prescription may be refilled up to five times within six months after the date the prescription was issued. Thus, Congress clearly mandated greater prescription controls for schedule II substances than for schedule III and IV substances. For example, a physician may—consistent with the statute—issue a prescription for a schedule III or IV controlled substance and circle on the prescription a certain number of refills. In this manner, a physician may provide a patient with up to a six-month supply of schedule III or IV controlled substance with a single prescription indicating five refills. The same cannot be done with a schedule II controlled substance since section 829(a) prohibits refills. The statute requires a separate prescription if the physician wishes to authorize a continuation of the patient's use of a schedule II drug beyond the amount specified on the first prescription.

Because the statute does not permit refill prescriptions for schedule II drugs, some physicians began over the last decade or so to provide patients with several prescriptions at once, writing "do not fill until [a specified date]" on the additional prescriptions. As noted above, among those physicians who have used this multiple prescription approach, the most common practice has been to give the patient three prescriptions, each for a thirty-day supply, writing on the second prescription "do not fill until [30 days later]" and writing on the third prescription "do not fill until [60 days later]."

Section 829 does not specifically address the practice of issuing multiple schedule II prescriptions. Nor is this practice addressed elsewhere in the

CSA.[2] In such situations (when faced with a provision of a statute that does not address the precise question at issue), the agency that administers the statute must interpret it consistent with the text, structure, and purposes of the Act as a whole. The Supreme Court has recently characterized section 829 as a provision that "ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse".[3]

Many of the comments that DEA received suggested that the issuance of multiple schedule II prescriptions, under appropriate circumstances, can be beneficial to the practice of medicine and does not promote addiction or recreational abuse. In fact, as discussed above, many commenters asserted that a physician can issue multiple prescriptions in a manner that allows for a greater level of control and supervision to prevent diversion and abuse than if the physician had authorized the same total amount of controlled substances with a single prescription. For example, some commenters said, issuing three ten-day prescriptions with specific instructions on when each should be filled provides for greater control by the physician than a single 30-day prescription for the same total amounts of drugs.

The Supreme Court has held that the administering agency, in order "to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis".[4] DEA has undertaken this task since publishing the Interim Policy Statement. The agency received numerous public comments on this issue. Upon consideration of these comments, DEA is hereby proposing that the issuance of multiple prescriptions in a single visit may be undertaken in a manner consistent with the text, structure, and purposes of the CSA, provided the procedures set forth in this proposed rule are followed.

Before setting forth the proposed rule, it is important to reiterate some additional basic principles:

For those patients who have written to DEA stating that they have been receiving prescriptions for schedule II controlled substances for several years (for example, for the treatment of severe pain or ADHD) and have adopted a routine of seeing their physician once every three months, it should be underscored that there is no requirement under the CSA or DEA regulations that such patients must visit their physician's office every month to pick up a new prescription. What is required, in each instance where a physician issues a prescription for any controlled substance, is that the physician properly determine there is a legitimate medical purpose for the patient to be prescribed that controlled substance and that the physician be acting in the usual course of professional practice.[5]

At the same time, schedule II controlled substances, by definition, have the highest potential for abuse, and are the most likely to cause dependence, of all the controlled substances that have an approved medical use.[6] Physicians must, therefore, employ the utmost care in determining whether their patients for whom they are prescribing schedule II controlled substances should be seen in person each time a prescription is issued or whether seeing the patient in person at somewhat less frequent intervals is consistent with sound medical practice and appropriate safeguards against diversion and misuse. Some physicians who submitted comments to DEA indicated that they treat patients for pain or ADHD and believe it is medically appropriate to see the patient in person in every instance where they issue a prescription for a schedule II controlled substance. No physician should view the rule being proposed here as encouragement to see his/her patients (those who are being prescribed schedule II controlled substances) on a less frequent basis; nor should any physician view this document as signal to be less vigilant for the signs of diversion or abuse. To the contrary, DEA shares the concerns of those physicians whose comments reflect that, in view of the increasingly alarming levels of schedule II drug abuse in the United States, the sound judgment and continuous vigilance of physicians are crucial components in preventing diversion and abuse.

Finally, nothing in this proposed rule changes the requirement that physicians must also abide by the laws of the states in which they practice and any additional requirements imposed by their state medical boards with respect to proper prescribing practices and what constitutes a bona fide physician-patient relationship.[7] As set forth in this proposed rule, the issuance of multiple schedule II prescriptions in the manner described will only be permissible if doing so is also permissible under applicable state laws. Thus, notwithstanding this proposed rule, individual states may disallow the practice of issuing multiple schedule II prescriptions.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this proposed rule will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). This proposed rule would merely provide an additional option that practitioners may utilize when prescribing schedule II controlled substances under certain circumstances. The proposed rule would not mandate any new procedures. Therefore, an initial regulatory flexibility analysis is not required for this proposed rule.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This proposed rule has been determined not to be a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, this proposed rule has not been reviewed by the Office of Management and Budget for purposes of Executive Order 12866.

Executive Order 13132

This proposed rule does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this proposed rule does not have federalism implications warranting the application of Executive Order 13132.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $115,000,000 or more in any one year. Therefore, no

[2] That the CSA does not address the issuance of multiple schedule II prescriptions is not surprising, since it appears that no physician employed this practice in 1970, when the CSA was enacted. The practice of issuing multiple schedule II prescriptions appears to have begun in approximately 1995.

[3] *Gonzales* v. *Oregon*, 126 S.Ct. 904, 925 (2006).

[4] *Chevron, U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 863–864 (1984).

[5] 21 CFR 1306.04(a); *United States* v. *Moore*, 423 U.S. 122 (1975).

[6] 21 U.S.C. 812(b).

[7] 21 U.S.C. 823(f)(1), (4).

actions are necessary under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not likely to result in any of the following: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or 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. This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. Therefore, the provisions of SBREFA relating to major rules are inapplicable to this proposed rule. However, a copy of this proposed rule is being submitted to each House of the Congress and to the Comptroller General in accordance with SBREFA (5 U.S.C. 801).

List of Subjects in 21 CFR Part 1306

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Proposed Rule

Pursuant to the authority vested in the Attorney General under sections 201, 202, and 501(b) of the CSA (21 U.S.C. 811, 812, and 871(b)), delegated to the Deputy Administrator pursuant to section 501(a) (21 U.S.C. 871(a)) and as specified in 28 CFR 0.100 and 0.104, Appendix to Subpart R, the Deputy Administrator hereby proposes that Title 21 of the Code of Federal Regulations, part 1306, be amended as follows:

PART 1306—[AMENDED]

1. The authority citation for part 1306 continues to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b), unless otherwise noted.

2. Section 1306.12 is revised to read as follows:

§ 1306.12 Refilling prescriptions; issuance of multiple prescriptions.

(a) The refilling of a prescription for a controlled substance listed in Schedule II is prohibited.

(b)(1) An individual practitioner may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance provided the following conditions are met:

(i) The individual practitioner properly determines there is a legitimate medical purpose for the patient to be prescribed that controlled substance and the individual practitioner is acting in the usual course of professional practice;

(ii) The individual practitioner writes instructions on each prescription (other than the first prescription, if the prescribing practitioner intends for that prescription to be filled immediately) indicating the earliest date on which a pharmacy may fill the prescription;

(iii) The individual practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse;

(iv) The issuance of multiple prescriptions as described in this section is permissible under the applicable state laws; and

(v) The individual practitioner complies fully with all other applicable requirements under the Act and these regulations as well as any additional requirements under state law.

(2) Nothing in this paragraph (b) shall be construed as mandating or encouraging individual practitioners to issue multiple prescriptions or to see their patients only once every 90 days when prescribing Schedule II controlled substances. Rather, individual practitioners must determine on their own, based on sound medical judgment, and in accordance with established medical standards, whether it is appropriate to issue multiple prescriptions and how often to see their patients when doing so.

3. Section 1306.14 is amended by adding a new paragraph (e) to read as follows:

§ 1306.14 Labeling of substances and filling of prescriptions.

* * * * *

(e) Where a prescription that has been prepared in accordance with § 1306.12(b) contains instructions from the prescribing practitioner indicating that the prescription shall not be filled until a certain date, no pharmacist may fill the prescription before that date.

Dated: August 28, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–14520 Filed 9–5–06; 8:45 am]

BILLING CODE 4410–09–P

Federal Register

Wednesday,
September 6, 2006

Part VI

The President

Executive Order 13411—Improving Assistance for Disaster Victims

Federal Register
Vol. 71, No. 172
Wednesday, September 6, 2006

Presidential Documents

Title 3—

The President

Executive Order 13411 of August 29, 2006

Improving Assistance for Disaster Victims

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*) (the "Stafford Act"), and to take further actions to improve the delivery of Federal disaster assistance, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the Federal Government to ensure that individuals who are victims of a terrorist attack, natural disaster, or other incident that is the subject of an emergency or major disaster declaration under the Stafford Act, and who are thereby eligible for financial or other assistance delivered by any department or agency of the executive branch (Federal disaster assistance), have prompt and efficient access to Federal disaster assistance, as well as information regarding assistance available from State and local government and private sector sources.

Sec. 2. *Task Force on Disaster Assistance Coordination.* (a) Plan to Improve Delivery of Federal Disaster Assistance. To further the policy in section 1 of this order, there is established the interagency "Task Force on Disaster Assistance Coordination" (Task Force). The Task Force shall develop a plan to streamline and otherwise improve the delivery of Federal disaster assistance (Plan). The Plan shall:

(i) include an inventory of Federal disaster assistance programs and assess the effectiveness of their respective delivery mechanisms;

(ii) recommend specific actions to improve the delivery of Federal disaster assistance, which shall include actions to provide a centralized application process for Federal disaster assistance, provide a centralized and continuously updated clearinghouse from which disaster victims may obtain information regarding Federal disaster assistance and State and local government and private sector sources of disaster assistance, reduce unnecessarily duplicative application forms and processes for Federal disaster assistance, and strengthen controls designed to prevent improper payments and other forms of fraud, waste, and abuse; and

(iii) include an implementation schedule for the Plan's recommendations that provides for the phased implementation of the Plan by December 31, 2008, including quarterly milestones and metrics to be used to measure and evaluate implementation.

(b) Membership of the Task Force. (i) The Task Force shall consist exclusively of the following members, or their designees who shall be at the Assistant Secretary level (or its equivalent) or higher:

(A) the Secretary of Homeland Security, who shall serve as Chair;

(B) the Secretary of the Treasury;

(C) the Secretary of Defense;

(D) the Attorney General;

(E) the Secretary of Agriculture;

(F) the Secretary of Commerce;

(G) the Secretary of Labor;

(H) the Secretary of Health and Human Services;

(I) the Secretary of Housing and Urban Development;

(J) the Secretary of Education;

(K) the Secretary of Veterans Affairs;

(L) the Director of the Office of Personnel Management;

(M) the Commissioner of Social Security;

(N) the Administrator of the Small Business Administration;

(O) the Director of the Office of Management and Budget; and

(P) such other officers of the United States as the Secretary of Homeland Security may designate from time to time.

(ii) The Secretary of Homeland Security, or the Secretary's designee, shall convene and preside at meetings of the Task Force, determine its agenda, direct its work, and, as appropriate to address specific subject matters, establish and direct subgroups of the Task Force. A member of the Task Force may designate, to perform Task Force subgroup functions of the member, any person who is part of such member's department or agency and who is either an officer of the United States appointed by the President or a member of the Senior Executive Service.

(c) Plan Approval and Implementation. Not later than March 1, 2007, the Secretary of Homeland Security shall submit the Plan to the President for approval through the Assistant to the President for Homeland Security and Counterterrorism and the Director of the Office of Management and Budget. Upon approval of the Plan by the President, the Secretary of Homeland Security, assisted by the Task Force, shall coordinate the implementation of the Plan. Until the completion of such implementation, the Secretary of Homeland Security shall submit a quarterly progress report to the Assistant to the President for Homeland Security and Counterterrorism and the Director of the Office of Management and Budget.

Sec. 3. *Assistance and Support.* To the extent permitted by law, the heads of all executive departments and agencies shall provide such assistance and information as the Secretary of Homeland Security may request in carrying out the Secretary's responsibilities under this order. Consistent with applicable law and subject to the availability of appropriations, the Department of Homeland Security shall provide necessary funding and administrative support for the Task Force.

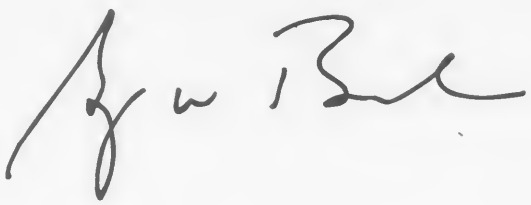
Sec. 4. *Administration.* This order shall: (a) be implemented in a manner consistent with applicable laws, including Federal laws protecting the information privacy rights and other legal rights of Americans, and subject to the availability of appropriations;

(b) be implemented in a manner consistent with the statutory authority of the principal officers of executive departments and agencies as heads of their respective departments or agencies; and

(c) not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, regulatory, and legislative responsibilities.

Sec. 5. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable

at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
August 29, 2006.

[FR Doc. 06–7492
Filed 9–5–06; 8:45 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 4646/P.L. 109–273
To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the "Coach John Wooden Post Office Building". (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109–274
To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the "John Paul Hammerschmidt Post Office Building". (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109–275
To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the "Captain George A. Wood Post Office Building". (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109–276
To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the "Morris W. Milton Post Office". (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109–277
To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the "Earl D. Hutto Post Office Building". (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109–278
To designate the facility of the United States Postal Service located at 1310 Highway 64 NW. in Ramsey, Indiana, as the "Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office". (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109–279
To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the "Sergeant Jacob Dan Dones Post Office". (Aug. 17, 2006; 120 Stat. 779)

H.R. 4/P.L. 109–280
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109th Congress

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