

*List of Items Controlled*

Unit: N/A  
 Related Controls: N/A  
 Related Definitions: N/A  
 Items:

The list of items controlled is contained in the ECCN heading.

■ 9. In supplement 1 to part 774, Category 8, Marine, Export Control Classification Number 8A018, the Items paragraph in the List of Items Controlled section, is revised to read as follows:

**8A018 Items on the International Munitions List**

\* \* \* \* \*

*List of Items Controlled*

Unit: \* \* \*  
 Related Controls: \* \* \*  
 Related Definitions: \* \* \*  
 Items:

a. Closed and semi-closed circuit (rebreathing) apparatus specially designed for military use, and specially designed components for use in the conversion of open-circuit apparatus to military use;

b. Naval equipment, as follows:

b.1. Diesel engines of 1,500 hp and over with rotary speed of 700 rpm or over specially designed for submarines;

b.2. Electric motors specially designed for submarines, *i.e.*, over 1,000 hp, quick reversing type, liquid cooled, and totally enclosed;

b.3. Nonmagnetic diesel engines, 50 hp and over, specially designed for military purposes. (An engine shall be presumed to be specially designed for military purposes if it has nonmagnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines, or its nonmagnetic content exceeds 75 percent of total weight.);

b.4. Submarine and torpedo nets; and

b.5. Components, parts, accessories, and attachments for the above.

■ 10. In supplement 1 to part 774, Category 8, Marine, a new Export Control Classification Number 8A918 is added immediately following ECCN 8A018 and immediately preceding ECCN 8A992 as follows:

**8A918 Marine Boilers.**

*Reason for Control:* RS, AT, UN.

Controls	Country chart
RS applies to entire entry .....	RS Column 2.
AT applies to entire entry .....	AT Column 1.
UN applies to entire entry .....	Rwanda.

*License Exceptions*

LVS: \$5000, except N/A for Rwanda  
 GBS: N/A  
 CIV: N/A

*List of Items Controlled*

Unit: \$ value  
 Related Controls: N/A  
 Related Definitions: N/A  
 Items:

a. Marine boilers designed to have any of the following characteristics:

a.1. Heat release rate (at maximum rating) equal to or in excess of 190,000 BTU per hour per cubic foot of furnace volume; or

a.2. Ratio of steam generated in pounds per hour (at maximum rating) to the dry weight of the boiler in pounds equal to or in excess of 0.83.

b. Components, parts, accessories, and attachments for the above.

Dated: March 23, 2004.

**Peter Lichtenbaum,**  
*Assistant Secretary for Export Administration.*

[FR Doc. 04-7005 Filed 3-29-04; 8:45 am]

**BILLING CODE 3510-33-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 101 and 177**

**Food Labeling and Indirect Food Additives Regulations; Technical Amendment**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations to reflect the correction of typographical and nonsubstantive errors. This action is editorial in nature and is intended to improve the accuracy of the agency's regulations.

**DATES:** Effective March 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Joyce A. Strong, Office of Policy and Planning (HF-27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7010.

**SUPPLEMENTARY INFORMATION:** This document amends FDA's regulations to reflect the correction of typographical and nonsubstantive errors in 21 CFR 101.69(o)(1) and 177.1520(b).

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because FDA is merely correcting nonsubstantive errors.

**List of Subjects**

*21 CFR Part 101*

Food labeling, Nutrition, Reporting and recordkeeping requirements.

*21 CFR Part 177*

Food additives, Food packaging.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 101 and 177 are amended as follows:

**PART 101—FOOD LABELING**

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

**Authority:** 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

**§ 101.69 [Amended]**

■ 2. Section 101.69 is amended in paragraph (o)(1) by adding a comma after "Office of Nutritional Products, Labeling and Dietary Supplements (HFS-800)".

**PART 177—INDIRECT FOOD ADDITIVES: POLYMERS**

■ 3. The authority citation for 21 CFR part 177 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

**§ 177.1520 [Amended]**

■ 4. Section 177.1520 is amended in paragraph (b) in the table under the entry for "Methyl methacrylate/butyl \* \* \*" by removing "200 C. St. SW., Washington, DC" and by adding in its place "5100 Paint Branch Pkwy., College Park, MD 20740".

Dated: March 24, 2004.

**Jeffrey Shuren,**  
*Assistant Commissioner for Policy.*

[FR Doc. 04-7040 Filed 3-29-04; 8:45 am]

**BILLING CODE 4160-01-S**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 3**

**RIN 0790-AG97**

**Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 822 of the National Defense Authorization act for Fiscal Year 2002, Public Law 107-107, 115 Stat. 1182. Section 822 provides for award of a follow-on production contract to traditional Defense contractors, without further competition, when the other transaction (OT) agreement for the prototype project provided for at least one-third non-Federal cost-share, consistent with law, and the OT agreement for the prototype project

satisfies certain additional conditions of law.

**DATES:** The final rule is effective March 30, 2004. This final rule will become effective for solicitations issued on March 30, 2004, or those issued 30 days after March 30, 2004. This final rule may be used for new prototype awards that result from solicitations issued prior to March 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** David Boyd, (703) 697-6710.

**SUPPLEMENTARY INFORMATION:**

**Background and Purpose**

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, 107 Stat. 1721, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as "other transaction" agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to "other transactions" for prototype projects.

Use of OT authority is authorized by law in the absence of the significant participation of a nontraditional Defense contractor, when at least one-third of the costs of the prototype project are to be provided by non-Federal parties to the agreement. The authority granted by section 822 of the National Defense Authorization Act for Fiscal Year 2002 provides for the authority to continue such prototype projects into production without competition in certain circumstances. The circumstances are identified in this rule. Additionally, a rule will be issued to the Defense Federal Acquisition Regulation Supplement that exempts such production contracts from further competition, notwithstanding the requirements of section 2304 of title 10, United States Code.

In implementing the law, the Department clarifies that the number of production units and target prices proposed for production must be evaluated during the competition for the prototype project. This is consistent with the law's competition requirement and is the basis for being exempted from

the need for further competition for the stated production quantity.

A proposed rule was published in the **Federal Register** for public comment on May 20, 2003 (68 FR 27497). No comments were received.

**Regulatory Evaluation**

*Executive Order 12866, "Regulatory Planning and Review"*

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

*Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)*

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

*Pub. L. 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)*

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional recordkeeping or other significant expense by project participants.

*Pub. L. 96-511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 *et seq.*)*

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

*Federalism (Executive Order 13132)*

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

**List of Subjects in 32 CFR Part 3**

Government procurement, Transactions for prototype projects.

■ Accordingly, 32 CFR part 3 is amended to read as follows:

**PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS**

■ 1. The authority citation for 32 CFR part 3 continues to read as follows:

**Authority:** Section 845 of Public Law (103-160, 107 Stat. 1721, as amended).

**§ 3.4 [Amended]**

■ 2. Section 3.4 is amended to add new definitions in alphabetical order to read as follows:

\* \* \* \* \*

*Contracting Officer.* A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings as defined in Chapter 1 of Title 48, CFR, Federal Acquisition Regulation, Section 2.101(b).

\* \* \* \* \*

*Project Manager.* The government manager for the prototype project.

\* \* \* \* \*

■ 3. New § 3.9 is added to read as follows:

**§ 3.9 Follow-on production contracts.**

(a) *Authority.* A competitively awarded OT agreement for a prototype project that satisfies the condition set forth in law that requires non-Federal parties to the OT agreement to provide at least one-third of the costs of the prototype project may provide for the award of a follow-on production contract to the awardee of the OT prototype agreement for a specific number of units at specific target prices, without further competition.

(b) *Conditions.* The Agreements Officer must do the following in the award of the prototype project:

(1) Ensure non-Federal parties to the OT prototype agreement offer at least one-third of the costs of the prototype project pursuant to subsection (d)(1)(B)(i), 10 U.S.C. 2371 note.

(2) Use competition to select parties for participation in the OT prototype agreement and evaluate the proposed quantity and target prices for the follow-on production units as part of that competition.

(3) Determine the production quantity that may be procured without further competition, by balancing of the level of the investment made in the project by the non-Federal parties with the interest of the Federal Government in having competition among sources in the acquisition of the product or products prototyped under the project.

(4) Specify the production quantity and target prices in the OT prototype agreement and stipulate in the agreement that the Contracting Officer for the follow-on contract may award a production contract without further competition if the awardee successfully completes the prototype project and agrees to production quantities and prices that do not exceed those specified in the OT prototype agreement (*see* part 206.001 of the Defense Federal Acquisition Regulation Supplement).

(c) *Limitation.* As a matter of policy, establishing target prices for production units should only be considered when the risk of the prototype project permits realistic production pricing without placing undue risks on the awardee.

(d) *Documentation.* (1) The Agreements Officer will need to provide information to the Contracting Officer from the agreement and award file that the conditions set forth in paragraph (b) of this section have been satisfied.

(2) The information shall contain, at a minimum:

- (i) The competitive procedures used;
- (ii) How the production quantities and target prices were evaluated in the competition;
- (iii) The percentage of cost-share; and
- (iv) The production quantities and target prices set forth in the OT agreement.

(3) The Project Manager will provide evidence of successful completion of the prototype project to the Contracting Officer.

Dated: March 12, 2004.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04-7044 Filed 3-29-04; 8:45 am]

**BILLING CODE 5001-06-M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[TX-122-1-7612; FRL-7641-2]

#### Determination of Nonattainment as of November 15, 1996 and Reclassification of the Beaumont/Port Arthur Ozone Nonattainment Area; State of Texas; Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the U.S. Court of Appeals for the Fifth Circuit's (the Court) reversal, the EPA is withdrawing its final action that extended the attainment date to November 15, 2007, and approved the transport demonstration (66 FR 26914) for the Beaumont/Port Arthur 1-hour ozone nonattainment area (the BPA area). The EPA finds that the BPA area has failed to attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1996, the attainment date for moderate nonattainment areas set forth in the Federal Clean Air Act (Act or CAA). As a result, the BPA area is reclassified by operation of law as a serious 1-hour ozone nonattainment area. The new serious area attainment date for the BPA area is as expeditiously as practicable but no later than November 15, 2005. The State of Texas must submit a State Implementation Plan (SIP) revision that

meets the serious area 1-hour ozone nonattainment area requirements of the Act on or before one year after the effective date of this final action. We are adjusting the dates by which the area must meet the rate-of-progress (ROP) requirements and adjusting contingency measure requirements as they relate to the ROP requirements. These final actions are in direct response and to comply with the Court's reversal.

In response to the Court's remand, we are withdrawing our final approval of BPA's 2007 attainment demonstration SIP, the Mobile Vehicle Emissions Budget (MVEB), the mid-course review commitment (MCR), and our finding that BPA implemented all Reasonable Available Control Measures (RACM). The required revised SIP must include, among other things, a revised attainment demonstration SIP, a new MVEB, and a re-analysis of RACM that complies with the Court's order.

**DATES:** This final rule is effective on April 29, 2004.

**ADDRESSES:** Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733; and, the Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:**

Karla Ann Richardson, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202-2733. Telephone Number (214) 665-8555, e-Mail Address: richardson.karla@epa.gov.

**SUPPLEMENTARY INFORMATION:**

Throughout this document "we," "us," and "our" means EPA. This supplementary information section is organized as listed in the following Table of Contents:

- I. What Is the Background for this Action?
- II. What Are the National Ambient Air Quality Standards?
- III. What Is the NAAQS for Ozone?
- IV. What Is a SIP and How Does It Relate to the NAAQS for Ozone?
- V. What Is the Beaumont/Port Arthur Nonattainment Area?
- VI. What Is the Additional Context for This Rulemaking?
- VII. Application of the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications
  - A. Serious Classification
  - B. Selection of Option 2—Reclassification to Serious

VIII. What Is the New Attainment Date for the Beaumont/Port Arthur Area?

IX. What is the Date for Submitting a Revised SIP for the Beaumont/Port Arthur Area?

X. Why Are We Withdrawing the Attainment Demonstration, MCR, and MVEB approvals and the RACM Finding, and What Are the Potential Impacts of the Withdrawals?

XI. How Does the Recent Release of MOBILE6 Interact With Reclassification?

A. What is the Relationship Between MOBILE6 and the Attainment Year Motor Vehicle Emissions Budgets?

B. What Is the Relationship Between MOBILE6 and the Post-1996 Rate-of-Progress Requirement?

XII. What Are the Rate-of-Progress and Contingency Measure Schedules?

A. Rate-of-Progress Milestones

B. 2005 Rate-of-Progress

C. Contingency for Failure To Achieve Rate-of-Progress by November 15, 1999, and November 15, 2002

XIII. What are the Impacts on the Title V Program?

XIV. What comments were received on the supplemental proposal approval, and how has the EPA responded to those?

XV. EPA Action

XVI. Statutory and Executive Order Reviews

#### I. What Is the Background for This Action?

The BPA area was classified as a moderate 1-hour ozone nonattainment area and, therefore, was required to attain the 1-hour ozone standard of 0.12 ppm by November 15, 1996. On April 16, 1999, EPA proposed to reclassify the BPA area to a serious ozone nonattainment area, or, in the alternative to extend BPA's attainment date if the State submitted a SIP consistent with the criteria of the Transport Policy. 64 FR 18864. As part of the proposed alternative reclassification of the area to serious, the EPA proposed to find that the BPA area did not attain the 1-hour ozone NAAQS by November 15, 1996, as required by the CAA. The proposed finding was based on 1994-1996 air quality data that showed the area's air quality violated the standard and the area did not qualify for an attainment date extension under the provisions of section 181(a)(5).<sup>1</sup> EPA also proposed that the appropriate reclassification of the area would be from moderate to serious.

Although the area was not eligible for an attainment date extension under

<sup>1</sup> Section 181(a)(5) specifies that a state may request, and EPA may grant, up to two one-year attainment date extensions. EPA may grant an extension if: (1) the state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.