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WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1780

RIN 2550–AA17

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight is issuing this final rule amending its rules of practice and procedure to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

DATES: This rule is effective on August 30, 2005.

FOR FURTHER INFORMATION CONTACT: David W. Roderer, Deputy General Counsel, at (202) 414–3804; Charlotte A. Reid, Associate General Counsel, at (202) 414–3810; or Frank R. Wright, Senior Counsel, at (202) 414–6439 (not toll-free numbers); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339 (TDD only).

SUPPLEMENTARY INFORMATION

Background

The Office of Federal Housing Enterprise Oversight (OFHEO), an independent office within the Department of Housing and Urban Development (HUD), is the exclusive financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act), as amended.[1] The Enterprises are government-sponsored corporations chartered to provide liquidity to the residential mortgage market and to promote the availability of mortgage credit by investing in residential mortgages and guaranteeing securities backed by residential mortgages.[2] OFHEO oversees the Enterprises to ensure that they remain adequately capitalized and operate in a safe and sound manner and in accordance with applicable laws, rules and regulations. To that end OFHEO is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.[3] In particular, section 1376 of the Act (12 U.S.C. 4636) empowers OFHEO to impose civil money penalties under specific conditions. OFHEO's Rules of Practice and Procedure (12 CFR part 1780) govern cease and desist proceedings, civil money penalty assessment proceedings and other administrative adjudications.[4]

The Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (the Inflation Adjustment Act) requires OFHEO, as well as other Federal agencies with the authority to issue civil money penalties (CMPs), to publish regulations to adjust the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.[5] The Inflation Adjustment Act required agencies to make an initial adjustment of their CMPs upon the statute's enactment, and further requires agencies to make additional adjustments on an ongoing basis, every four years following the initial adjustment. The purpose of these periodic adjustments is to maintain the deterrent effect of CMPs and promote compliance with the law. Subpart E of OFHEO's Rules of Practice and Procedure sets forth the Civil Money Penalty Inflation Adjustment amounts and discusses their applicability. *See* 12 CFR parts 1780.80–81.

As required, OFHEO made the initial adjustment to the maximum civil money penalty amounts in 1997, and provided that such adjustments were applicable to any violation occurring after October 23, 1996 (the effective date of the Inflation Adjustment Act).[6] The last adjustment was made in 2000, effective January 4, 2001.[7] OFHEO again is amending the maximum civil money penalty amount for each tier that OFHEO has authority to impose under 12 U.S.C. 4636 in accordance with the Inflation Adjustment Act.

Under the Inflation Adjustment Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by a cost-of-living adjustment. As is described in detail below, the Inflation Adjustment Act provides that this cost-of-living adjustment is to reflect the percentage increase in the Consumer Price Index since the CMPs were last adjusted or established, and rounded in accordance with rules provided in the statute.[8]

Description of the Rule

This final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR part 1780.80 to reflect the new adjusted maximum penalty amount that OFHEO

[1] *See* Federal Housing Enterprises Financial Safety and Soundness Act of 1992, Pub. L. 102–550, Title XIII, Section 1301, Oct. 28, 1992, 106 Stat. 3672, 3941–4012 (codified at 12 U.S.C. 4501 *et seq.*).

[2] *See* Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.;* Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*; Act at 12 U.S.C. 4561–67, 4562 note.

[3] *See* Pub. L. No. 102–550, Title XIII, Section 1313 and 1371–1379B (Subtitle C—Enforcement Provisions) (codified at 12 U.S.C. 4513 and 4631–4641, respectively).

[4] *See* 12 CFR 1780.1

[5] *See* 28 U.S.C. 2461 note.

[6] *See* 62 FR 68152, December 31, 1997.

[7] *See* 66 FR 709, Jan. 4, 2001.

[8] The Inflation Adjustment Act specifically identifies the Consumer Price Index for All Urban Consumers published by the United States Department of Labor (CPI–U). The Department of Labor (DOL) computes the CPI–U using two different base time periods, 1967 and 1982–1984. The Inflation Adjustment Act does not specify which of these base periods should be used to calculate the inflation adjustment. OFHEO calculated the initial adjustment of its CMPs using CPI–U data with the 1967 base period. OFHEO is using CPI–U data with the 1982–1984 base period for the adjustments adopted in this final rule, because such data now reflect the most current method of computing the CPI–U.

may impose upon an executive officer or director or an Enterprise within each tier. The increases in maximum penalty amounts contained in this final rule may not necessarily affect the amount of any CMP that OFHEO may seek for a particular violation; OFHEO would calculate each CMP on a case-by-case basis in light of a variety of factors.[9]

The Inflation Adjustment Act directs federal agencies to calculate each CMP adjustment as the percentage by which the CPI–U for June of the calendar year preceding the adjustment exceeds the CPI–U for June of the calendar year in which the amount of each CMP was last adjusted. The CMP for Third Tier penalties by an Enterprise was adjusted in 2000, and every other CMP was last adjusted in 1997.[10] Since OFHEO is making this round of adjustments in calendar year 2005, and OFHEO made the last round of adjustments in calendar year 2000, the inflation adjustment amount for each CMP that was adjusted in 2000 was calculated by comparing the CPI–U for June 2000 (172.4) with the CPI–U for June 2004 (189.7), resulting in an inflation adjustment of 10.0 percent.[11] For each CMP that was last adjusted in 1997, the inflation adjustment amount was calculated by comparing the CPI–U for June 1997 (160.3) with the CPI–U for June 2004 (189.7), resulting in an inflation adjustment of 18.3 percent. For each CMP, the product of this inflation adjustment and the previous maximum penalty amount was then rounded in accordance with the specific requirements of the Inflation Adjustment Act, and was then summed with the previous maximum penalty amount to determine the new adjusted maximum penalty amount.[12] The table below sets out these items accordingly.

U.S. code citation	Description	Previous maximum penalty amount	Inflation increase	Rounded inflation increase	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	5,500	1,006.50	1,000	6,500
12 U.S.C. 4636(b)(2)	Second Tier (Executive Officer or Director)	11,000	2,013	0	11,000
12 U.S.C. 4636(b)(2)	Second Tier (Enterprise)	27,500	5,032.50	5,000	32,500
12 U.S.C. 4636(b)(3)	Third Tier (Executive Officer or Director)	110,000	20,130	20,000	130,000
12 U.S.C. 4636(b)(3)	Third Tier (Enterprise)	1,150,000	115,000	125,000	1,275,000

Section 1780.81 states that the adjustments made in § 1780.80 apply only to violations that occur after the effective date, August 30, 2005.

Public Notice and Comment and Delayed Effective Date Not Required

OFHEO finds good cause that notice and an opportunity to comment on this document are unnecessary under the Administrative Procedure Act, 5 U.S.C. 551–559, as amended (APA). This rulemaking conforms with and is consistent with the statutory directive set forth in the Inflation Adjustment Act, with no issues of policy discretion, and public comment is impracticable and unnecessary. Accordingly, OFHEO is issuing the amendments as a final rule.

In addition, OFHEO finds good cause to make this rule effective upon publication of this document in the **Federal Register** under the APA. *See* 5 U.S.C. 553(d). This final rule does not impose any additional responsibilities on any entity. Instead, it simply adjusts the amount of each CMP tier as dictated by the Inflation Adjustment Act.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

This final rule is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have 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 or foreign markets.

Accordingly, no regulatory impact assessment is required and this final rule has not been submitted to the Office of Management and Budget for review.

Unfunded Mandates Reform Act of 1995

This final rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. As a result, the final rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) only applies to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b) (*see* 5 U.S.C. 601(2)). OFHEO has determined for good cause that the APA does not require a general notice of proposed rulemaking for this regulatory action. The Regulatory Flexibility Act does not apply to this final rule.

Paperwork Reduction Act of 1995

The rule contains no information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

List of Subjects in 12 CFR Part 1780

Administrative practice and procedure, Penalties.

■ Accordingly, for the reasons set out in the preamble, the Office of Federal

[9] *See, e.g.*, 12 CFR part 1780.1(c).

[10] *See* 66 FR 709, Jan. 4, 2001; 62 FR 68152, Dec. 31, 1997.

[11] OFHEO's last round of adjustments in 2000 applied an inflation factor of 3.7 percent, calculated by comparing June 1997 data to June 1999 data. The 1997 data was used as the base period in accordance with the Inflation Adjustment Act's directive to use CPI–U data from the year of the CMP's previous adjustment. The resulting penalty was then rounded in accordance with the statutory rules described below. 66 FR 709, January 4, 2001. Although the adjustment is being made in calendar year 2005, the resulting CMP increases do not take effect until publication of the rule, and will only apply to conduct occurring after such data.

[12] The statute's rounding rules require that each increase be rounded to the nearest multiple as follows: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000.

Housing Enterprise Oversight hereby amends 12 CFR part 1780 as follows:

PART 1780—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1780 is revised to read as follows:

Authority: 12 U.S.C. 4501, 4513(b), 4517, 4521, 4631–4641.

■ 2. Revise Subpart E of part 1780 to read as follows:

Subpart E—Civil Money Penalty Inflation Adjustments

§ 1780.80 Inflation adjustments.

The maximum amount of each civil money penalty within OFHEO's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (28 U.S.C. 2461 note) as follows:

U.S. code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	6,500
12 U.S.C. 4636(b)(2)	Second Tier (Executive Officer or Director)	11,000
12 U.S.C. 4636(b)(2)	Second Tier (Enterprise)	32,500
12 U.S.C. 4636(b)(3)	Third Tier (Executive Officer or Director)	130,000
12 U.S.C. 4636(b)(3)	Third Tier (Enterprise)	1,275,000

§ 1780.81 Applicability.

The inflation adjustments in § 1780.80 apply to civil money penalties assessed in accordance with the provisions of 12 U.S.C. 4636 for violations occurring after the effective date, August 30, 2005.

Dated: August 25, 2005.

Stephen A. Blumenthal,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 05–17232 Filed 8–29–05; 8:45 am]

BILLING CODE 4220–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 124, 125 and 126

RIN 3245–AF31

HUBZone, Government Contracting, 8(a) Business Development and Small Business Size Standard Programs

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends SBA's HUBZone, 8(a) Business Development, Government Contracting and Size Standard regulations to implement provisions of the Small Business Act including the Consolidated Appropriations Act, 2005, specifically, Subtitle E of Division K entitled the Small Business Reauthorization and Manufacturing Assistance Act of 2004. Consistent with the new statutory requirements under Subtitle E, this interim rule: Amends the definitions of the terms ''business concern,'' ''affiliation,'' ''HUBZone small business concern'' and ''qualified HUBZone small business concern;'' amends the HUBZone eligibility requirements for tribally-owned HUBZone concerns; extends qualified HUBZone areas to include military base closure areas for a period of five years; revises the definition of a ''qualified non-metropolitan county;'' extends the redesignation period for HUBZone areas through the release of the 2010 census data; and provides a five percent HUBZone evaluation price preference for agricultural commodities in international food aid procurements. Pursuant to the Administrative Procedure Act, SBA has determined that there is good cause to issue this rule as an interim rule with an immediate effective date. However, SBA encourages and will consider all timely public comments in developing the final rule.

DATES: This interim rule is effective August 30, 2005. Comments must be received on or before October 31, 2005.

ADDRESSES: You may submit comments, identified by RIN #3245–AF31, by any of the following methods:

Internet: *http://www.regulations.gov.* Follow the instructions for submitting comments. E-mail: *hubzone@sba.gov.* Fax: (202) 481–5593.

Mail or Hand Deliver: Michael McHale, Associate Administrator for the HUBZone Program, 409 Third Street, SW., Washington, DC, 20416.

FOR FURTHER INFORMATION CONTACT: Sheryl J. Swed, Office of Government Contracting, at (202) 205–6413 or by e-mail at: *sheryl.swed@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. Statutory Authority

On December 8, 2004, the President signed into law the Consolidated Appropriations Act, 2005, Public Law 108–447 which contained the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (the Reauthorization Act). Subtitle E of the Reauthorization Act amended certain provisions of the Small Business Act, 15 U.S.C. 631 *et. seq.,* that govern the HUBZone program and the definition of small agricultural cooperative.

1. Section 151 of the Reauthorization Act

In particular, Section 151 of the Reauthorization Act relaxed the statutory requirement that a HUBZone small business concern (SBC) must be entirely owned by U.S. citizens. Congress concluded that this statutory mandate precluded small business owners from taking advantage of available forms of business organizations that limit the personal liability of business owners. It also precluded ownership by small agricultural cooperatives that operate in rural HUBZones, and thereby deprived those communities of the economic benefits of increased HUBZone contracting opportunities.

As a result, Section 151 of the Reauthorization Act amended the definition of ''HUBZone SBC'' in section 3(p)(3)(A) of the Small Business Act, 15 U.S.C 632(p)(3)(A), to require that SBCs eligible for HUBZone certification be 51 percent (instead of 100 percent) owned and controlled by U.S. citizens. It also added a new section 3(p)(3)(E) to the Small Business Act, 15 U.S.C 632(p)(3)(E), to include as HUBZone SBCs small agricultural cooperatives or SBCs wholly or partially-owned by small agricultural cooperatives organized and incorporated in the United States. Also in connection with agricultural cooperatives, Section 151 further amended Section 3(j) of the Small Business Act, 15 U.S.C. 632(j), to require that small agricultural cooperatives be treated as business concerns for purposes of the Small

Business Act. This section also states that when determining size, SBA should not include the income or employees of the underlying members of the cooperative. Because SBA's programs and services were created for the benefit of the small business community, SBA interprets this section to mean that the members of any small agricultural cooperative applying for SBA assistance must also qualify as a small business concern or small agricultural cooperative in order to qualify for SBA assistance. To interpret the statute otherwise would circumvent the Agency's mission.

In addition, Section 151 of the Reauthorization Act expanded the employee residency requirement for tribally-owned HUBZone SBCs. Previously, the Small Business Act did not mandate that tribally-owned concerns maintain a principal office in a qualified HUBZone and hire at least 35 percent of their employees from any HUBZone area, as is the requirement for other HUBZone SBCs. Instead, section 3(p)(5)(A)(i)(I)(bb) of the Small Business Act, 15 U.S.C. 632(p)(5)(A)(i)(I)(bb), required that at least 35 percent of the tribally-owned HUBZone SBC's employees performing a HUBZone contract must reside within an Indian Reservation governed by one or more of the tribal government owners or an adjoining HUBZone. Although that requirement was originally intended to encourage economic development of tribes, Congress determined that, over time, it had the unintended consequence of limiting the kinds of contracts that tribally-owned concerns could perform and of inhibiting their potential synergies with other business organizations.

To remedy the disparity this separate employee residency requirement created for tribally-owned HUBZone SBCs (as compared to other HUBZone SBCs), Section 151 of the Reauthorization Act added as an option for tribally-owned concerns the same residency and principal office requirement that applies to other HUBZone SBCs. As amended, Section 3(p)(5)(A)(i)(I)(aa) of the Small Business Act, 15 U.S.C. 632(p)(5)(A)(i)(I)(aa), now allows tribally-owned concerns the option of either maintaining their principal office in a HUBZone and hiring at least 35 percent of their employees from any HUBZone area, or complying with the existing separate requirement that 35 percent of their employees performing a HUBZone contract reside within an Indian Reservation governed by one or more of the tribal government owners or adjoining HUBZone.

2. Section 152 of the Reauthorization Act

In Section 152 of the Reauthorization Act, Congress provided three basic amendments to expand the areas that qualify as HUBZones. First, Section 152 added new Sections 3(p)(1)(E) and 3(p)(4)(D) to the Small Business Act, 15 U.S.C. 632(p)(1)(E), 632(p)(4)(D), to authorize military base closure areas that have undergone final closure to be treated as qualified HUBZones for a period of five years. Congress recognized that many base closure areas are not located in qualified HUBZones, and therefore do not benefit from the job creation and economic revitalization potential of the HUBZone program.

Second, Section 152 revised the statutory definition of ''qualified non-metropolitan county'' in Section 3(p)(4)(B)(ii)(II) of the Small Business Act, 15 U.S.C. 632(p)(4)(B)(ii)(II). Under the previous definition, some of the poorest rural communities in states with high unemployment did not qualify as a HUBZone based on unemployment because the unemployment qualification was based solely on the statewide unemployment average. Accordingly, Section 152 revised the definition of ''qualified non-metropolitan county'' to allow for a comparison of a county's unemployment rate to the lower of the statewide or the national average, in determining eligibility.

Third, Section 152 of the Reauthorization Act expanded qualified HUBZones by extending the redesignation period for HUBZone areas through the public release of the 2010 census data. The previous statutory definition of ''redesignated area'' in Section 3(p)(4)(C) of the Small Business Act, 15 U.S.C. 632(p)(4)(C), allowed those areas that no longer qualify as HUBZones to remain in the program for a period of three years. Congress determined that this three-year grandfather period did not provide sufficient time for firms to recoup a return on their investment in locating their businesses in qualified HUBZone areas, adjusting their ownership structure, and recruiting HUBZone residents as employees. To allow firms additional time to reap the benefits of their HUBZone investment, Section 152 extended the redesignation period until the later of the date on which the Census Bureau publicly releases the first results from the 2010 decennial census or 3 years after the date on which the area ceased to qualify as a HUBZone.

3. Section 153 of the Reauthorization Act

Finally, in Section 153 of the Reauthorization Act, Congress provided a five percent HUBZone evaluation price preference in international food aid procurements by the Secretary of Agriculture. Congress explained that the previously authorized price evaluation preference regime may have made it more difficult for non-HUBZone SBCs to compete in food aid tender auctions and, in turn, may have had the unintended effect of diminishing the competitive supplier base. Section 153 therefore amended Section 31(b)(3) of the Small Business Act, 15 U.S.C. 657a(b)(3), to apply a five percent price evaluation preference on the first 20 percent of U.S. Department of Agriculture's procurements of commodities used for international food aid export operations.

This interim rule amends Parts 121, 124, 125 and 126 of SBA's regulations to adopt the specific statutory changes provided under Subtitle E of the Reauthorization Act. In accordance with the express statutory language and declared legislative purposes of those changes, this interim rule amends the exceptions to SBA's affiliation rules in 13 CFR 121.103 and the definition of business concern in § 121.105; for consistency purposes, amends §§ 124.503 and 126.607 to incorporate the preference for HUBZone, 8(a) and service disabled veterans (SDV) over small business set-asides set forth in SBA's SDV regulations, clarifies the definition of ''employee'' for the HUBZone program in § 125.6; adds new definitions and amends existing definitions in § 126.103; amends the employee residency requirement for tribally-owned HUBZone SBCs and adds the requirements for small agricultural cooperatives to be considered qualified HUBZone SBCs in § 126.200; amends the corporate stock ownership example to reflect the change in ownership requirements in § 126.201; amends § 126.204 to include agricultural cooperatives; clarifies the application of requirements for SBCs applying for HUBZone status based on a location in a qualified base closure area in § 126.304; amends the price evaluation preference for agricultural commodities in § 126.613 and reorganizes and clarifies § 126.700 to make it consistent with SBA's other regulations regarding contractor performance requirements.

B. Section-by-Section Analysis

Statutory changes to the definition of small agricultural cooperative require

SBA to add another exception to its affiliation rule in § 121.103 and to modify its definition of business concern in § 121.105.

To make the HUBZone regulations consistent with SBA's recently published SDV regulations, SBA is adding paragraph (j) to § 124.503 and revising § 126.607 to incorporate contracting preferences for HUBZone, 8(a) and SDV over small business set-asides. This change will ensure consistent guidance throughout 13 CFR Chapter 1.

To clarify the definition of ''employee'' as it relates to the HUBZone program, SBA is adding more explicit language to § 125.6(e)(6) to indicate that for purposes of the HUBZone program, the definition of ''employee'' in § 126.103 controls.

SBA is adding several new definitions in § 126.103 to implement the statutory changes under the Reauthorization Act. To incorporate the new statutory requirement for the treatment of military base closure areas as qualified HUBZones, SBA is adding a definition for the terms ''base closure area'' and ''qualified base closure area'' in § 126.103. With respect to the term ''base closure area,'' the interim rule adopts the identical definition of that term provided in the amended Section 3(p)(4)(D) of the Small Business Act, 15 U.S.C. 632(p)(4)(D). Under that definition, a ''base closure area'' means lands within the external boundaries of a military installation that were closed through a privatization process under specified authority. To accommodate the statutory five-year period in which a base closure area qualifies as a HUBZone, the interim rule adds the new term ''qualified base closure area,'' which limits the qualifying period of a base closure area to five years from the date of final closure of the base or five years from the date of signing of the legislation, December 8, 2004. SBA will rely on the Department of Defense, Office of Economic Adjustment, as the authority to determine whether a base is closed.

In addition, since the amended Section 3(p)(3)(E) of the Small Business Act, 15 U.S.C. 632(p)(3)(E), now authorizes ownership in a HUBZone SBC by small agricultural cooperatives organized or incorporated in the U.S., this interim rule adds a definition for the term ''small agricultural cooperative.'' Amended § 126.103 adopts the existing definition of a ''small agricultural cooperative'' provided in Section 3(j) of the Small Business Act, 15 U.S.C. 632(j). That definition makes clear that in determining size, an agricultural cooperative is considered a ''business concern'' and that the income or employees of any member of the cooperative is not included in the calculation of size. The definition of ''small agricultural cooperative'' in § 126.103 further indicates that any entity other than an SBC, small cooperative or U.S. citizen may not be a member of a small agricultural cooperative.

SBA is also revising the definition of several existing terms in § 126.103. With respect to base closure areas, SBA is amending the definition of ''HUBZone'' in § 126.103, to include a ''qualified base closure area'' as a designated HUBZone. In implementing the statutory changes regarding ownership of HUBZone SBCs by U.S. citizens and by small agricultural cooperatives, SBA is amending the definition of a ''HUBZone small business concern.'' As expressly provided in the amended Section 3(p)(3)(A) of the Small Business Act, 15 U.S.C. 632(p)(3)(A), SBA is amending the definition of a ''HUBZone SBC'' in § 126.103, to include a SBC that is at least 51 percent owned and controlled by one or more U.S. citizens. Likewise, as expressly provided in the amended Section 3(p)(3)(E) of the Small Business Act, 15 U.S.C. 632(p)(3)(E), the interim rule amends the definition of ''HUBZone SBC'' to include SBCs that are small agricultural cooperatives organized or incorporated in the United States, wholly owned by one or more small agricultural cooperatives or partially owned by one or more small agricultural cooperatives organized or incorporated in the United States, provided that all other owners are small business concerns or U.S. citizens.

Also in connection with § 126.103, SBA is amending the definition of the term ''qualified non-metropolitan county,'' to incorporate the new statutory definition of the term in Section 3(p)(4)(B)(ii)(II) of the Small Business Act, 15 U.S.C. 632(p)(4)(B)(ii)(II). Consistent with that definition, the interim rule revises the definition of a ''qualified non-metropolitan county'' to allow a comparison between the statewide unemployment average and the national average in determining whether a non-metropolitan county qualifies as a HUBZone based on unemployment.

SBA is also amending the definition of ''redesignated area'' in § 126.103, in accordance with the statutory amendments of the term in Section 3(p)(4)(C) of the Small Business Act, 15 U.S.C. 632(p)(4)(C). Under the revised § 126.103, a ''redesignated area'' is defined as the later of the date on which the Census Bureau publicly releases the first results from the 2010 decennial census or three years after the date on which the area ceased to qualify as a HUBZone.

With respect to the new eligibility requirements for tribally-owned concerns under Section 3(p)(5)(A)(i)(I) of the Small Business Act, 15 U.S.C. 632(p)(5)(A)(i)(I), SBA is amending § 126.200, which provides the eligibility requirements for such concerns. As amended, § 126.200 now allows tribally-owned concerns located in qualified HUBZones the option of either maintaining their principal office in a HUBZone and hiring at least 35 percent of their employees from any HUBZone area, or of complying with the existing separate requirement that 35 percent of their employees performing a HUBZone contract reside within an Indian Reservation governed by one or more of the tribal government owners or adjoining HUBZone.

SBA is also adding the requirements for small agricultural cooperatives to § 126.200(c) in accordance with Section 3(p)(5)(A)(i)(I) of the Small Business Act, 15 U.S.C. 632(p)(5)(A)(i)(I). To be a qualified HUBZone SBC, a small agricultural cooperative must meet the ownership requirements of 15 U.S.C. 632(p)(3)(E), have a principal office located in a HUBZone and employ at least 35% of its employees from a HUBZone.

The examples in §§ 126.200(b)(1) and 126.201(a) have also been amended to reflect the new requirement that SBCs be at least 51% owned and controlled by U.S. citizens.

Section 126.204, relating to SBA's consideration of affiliates when determining qualified HUBZone SBC's, has also been amended to provide an exception for agricultural cooperatives in accordance with Section 3(j) of the Small Business Act, 15 U.S.C. 632(j). The statutory definition of agricultural cooperative in the Small Business Act provides that when determining the size of a cooperative, SBA may not include the income or employees of the cooperative members. 15 U.S.C. 632(j). This means the cooperative and its members are not considered affiliated by virtue of their membership in the cooperative.

SBA is amending § 126.304 to describe the process for verifying the specific areas that are considered ''qualified base closure areas.'' The interim rule adds a new § 126.304(d), which explains that concerns applying for HUBZone status based on a location within a qualified base closure area must use SBA's List of Qualified Base Closure Areas to verify that the location is within a qualified base closure area.

The HUBZone map will be modified to reflect these areas. It also describes the information concerns may submit to SBA if they believe the List fails to identify a particular location as a qualified base closure area.

SBA is making a technical correction to § 126.503 by changing the word ''may,'' found in subparagraph (c), to ''will'' in order to be consistent with the language of § 126.803(d). Section 126.503(c) cross references § 126.803, therefore the language in both sections needs to be consistent.

SBA is amending § 126.613 to incorporate the new statutory price evaluation preference for international food aid procurements provided under Section 31(b)(3) of the Small Business Act, 15 U.S.C. 657a(b)(3). The amended § 126.613 provides a 5% price evaluation preference on the first 20% of the USDA procurements for commodities used for international food aid export operations.

Finally, SBA is making a technical correction to § 126.700 by changing the citation from § 125.6(b) to § 125.6(c) and further clarifying the section by reorganizing the paragraphs and adding more explicit language in order to be consistent with § 125.6(c) and the Small Business Act. As currently drafted, § 126.700 is a source of confusion for many SBCs and this confusion may lead to misapplication of SBA's regulations resulting in the award of subcontracts to non-qualified HUBZone concerns. It is also inconsistent with § 125.6 and § 3(p)(5)(C) of the Small Business Act as it incorrectly requires that for construction contracts a qualified HUBZone SBC must perform 50% of the cost of the contract and at least 15% (or 25% depending on type of contract) of the cost of contract for personnel. As currently drafted, the two percentages do not measure the same base, that is, one relates to the overall cost of the contract and one to the cost of the contract incurred for personnel. This discrepancy was never intended and is not consistent with the requirements of the Small Business Act. To clarify this inconsistency, this rule changes the current performance of work requirement for construction contracts from ''at least 50% of the contract'' to ''at least 50% of the cost of contract incurred for personnel.'' This standard is what is referenced throughout the Small Business Act (*see* §§ 3(p)(5)(C), 8(a)(14)(A) and 15(o)) and in § 125.6 of SBA's regulations, and the change to one standard ensures consistency throughout SBA's regulations. More explicit language was also added to clarify the relationship between the prime and subcontracting performance of work requirements by stating that not more than 50% of the cost of contract incurred for personnel may be subcontracted to a non-qualified HUBZone SBC.

Although SBA is issuing this rule as an interim rule with an immediate effective date, it encourages public comments on these regulatory amendments. In developing the final rule, SBA will consider all timely comments received.

C. Justification for Publication as an Interim Rule

In general, SBA publishes a proposed rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act and SBA regulations. 5 U.S.C. 553, and 13 CFR 101.108. The Administrative Procedure Act provides an exception to this standard rulemaking process when an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim rule without soliciting prior public comment.

SBA has determined that there is good cause to issue this rule without prior notice and opportunity for public comment because it is impracticable, unnecessary, and contrary to the public interest to do so under the present circumstances. As discussed above, Congress amended several HUBZone provisions in the Small Business Act to expand the program's reach over the Nation's economically distressed communities and to eliminate unduly restrictive HUBZone requirements that impede the achievement of the HUBZone goals. These statutory changes became effective on December 8, 2004.

As a result of these recent legislative amendments, important provisions of SBA's existing HUBZone, Government Contracting, 8(a) Business Development and Size Standard regulations are now inconsistent with governing sections of the Small Business Act. It is both unnecessary and impracticable to provide advance notice and public participation in implementing the recent statutory changes because SBA is simply adopting the identical amendments mandated by the Reauthorization Act and ensuring consistency with existing provisions of the Small Business Act, and any delay in revising the inconsistent provisions in SBA's existing regulations will hamper the proper application of important HUBZone requirements. In addition, immediate implementation of the statute is in the public interest, since the legislative amendments expand the opportunities for HUBZone contracting. Specifically, the time it will take to afford prior public participation in this rulemaking will deprive newly eligible firms and economically depressed communities of the needed economic benefits of the HUBZone program, and will frustrate the ability of Federal contracting agencies to utilize the expanded program to achieve the statutory HUBZone procurement goal.

Accordingly, SBA has determined that there is good cause to issue this rule without prior public participation. SBA does, however, encourage the public to comment on the interim rule, especially the clarifications to § 126.700 and will consider all timely comments in preparing the final rule.

D. Justification for Immediate Effective Date of Interim Rule

The Administrative Procedure Act requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA has determined that there is good cause for an immediate effective date of this interim rule, instead of observing the 30-day period between publication and effective date. As discussed more fully above in the Justification of Publication of Interim Rule, any delay in the effective date of this interim rule will unduly perpetuate existing inconsistencies between certain provisions of SBA's HUBZone regulations and sections of the Small Business Act. It will also hinder the accomplishment of the HUBZone goals.

E. Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–602)

OMB determined that this rule constitutes a ''significant regulatory action'' under Executive Order 12866. SBA's Regulatory Impact Analysis is set forth below.

Regulatory Impact Analysis

1. General Considerations

a. *Is there a need for the regulatory action?*

SBA has determined that this regulatory action is necessary. SBA is statutorily authorized to administer the HUBZone program and is required to implement all statutory changes to the

program. The Reauthorization Act amended several provisions of the Small Business Act governing the HUBZone program. To implement these statutory changes, SBA must amend its existing HUBZone regulations. The amendments are also necessary and appropriate to better serve the needs of small business concerns (SBCs) and the statutory goals of the HUBZone program. There are no practical alternatives to this implementation of the statutory changes.

b. *What is the baseline?*

SBA considered several baselines in formulating this interim rule. These include the existing HUBZone program regulations and definitions that the interim rule revises; the estimated universe of potential HUBZone SBCs; the existing statutory requirements; the achievement of the three percent HUBZone contracting goal; and the current procurement practices of Federal agencies.

It is difficult to obtain precise quantitative estimates of the impact these changes might have on these baseline criteria. However, SBA estimates that adoption of this interim rule will increase the number of HUBZone SBCs, increase the number of HUBZone procurement actions by Federal agencies, and result in better and more efficient administration of the program. Ultimately, the program would move closer to meeting its statutory objectives of creating jobs and infusing capital into distressed communities.

c. *Were there any alternatives?*

There are no alternatives to implementing the statutorily mandated provisions detailed in the interim rule. The amendments of the Reauthorization Act, require SBA to amend the HUBZone regulations so that they will conform to the new statutory provisions. The regulatory amendments also facilitate the growth of the program to Congressionally-established levels, better serve the program's small business participants, and assist in accommodating the procurement needs of Federal agencies.

2. Benefit Estimates

The most significant benefits to implementing the changes included in this interim rule are:

a. *Increased benefits to both small businesses and Federal agencies.*

SBA believes that the changes in this interim rule will increase the base number of small businesses in the HUBZone program and increase the program's viability and utilization by Federal agencies. These two effects are mutually dependent in that the more firms that are in the program, the more Federal agencies will use the program. Furthermore, when more Federal agencies use the program, more concerns will want to take advantage of the contract assistance available under the program. According to available data, there are an estimated 220 counties to be added as a result of this new legislation. In addition, over 150 locations may be designated as HUBZone locations as a result of military base closures. As these areas are defined by the Department of Defense, they will be posted on the HUBZone Web site and map.

b. *Greater administrative efficiency and program integrity.*

Because the amendments in this interim rule relax some of the previous program requirements, the interim rule will likely streamline and improve the effective administration of the HUBZone program. It will also enhance SBA's ability to administer the program with existing resources and better focus the program benefits on the businesses that operate in areas of low income or high unemployment.

c. *Greater contracting efficiency for Federal agencies.*

SBA believes that by increasing the level of activity and participation in the HUBZone program, it will increase economic savings to the Federal government on HUBZone awards. In particular, an increase in the number of eligible HUBZone concerns will provide procuring agencies with a larger base of HUBZone vendors. This will ultimately reduce the cost of HUBZone contracts through increased competition among HUBZone SBCs.

3. Cost Estimates

SBA expects that as a result of this interim rule, there will be significant increases in the number of concerns participating in the HUBZone program and in the number of HUBZone contract dollars. To the extent that this materializes, there may be attendant cost increases to the government in terms of the costs of goods and services and slightly increased administrative costs. However, existing provisions of the Federal Acquisition Regulation concerning the determination of ''fair and reasonable'' pricing will mitigate any significant monetary costs to the government as a result of this interim rule. SBA does not believe these changes will result in significantly higher costs to HUBZone SBCs because the amendments do not create additional burdens or restrictions on SBCs.

4. Other Considerations, Including Distributional Effects, Equity Considerations and Uncertainty

SBA anticipates that the distribution of contracts among different procurement vehicles will change. Non-HUBZone concerns currently participating in the Federal marketplace will be affected economically as a result of their ineligibility to compete for HUBZone contracts. These costs will vary based on the goods and services provided by newly eligible HUBZone SBCs. In some industries there may be very little impact, while in other industries there may be a substantial impact.

Large Federal prime contractors may experience some decrease in contract opportunities as Federal agencies increase their utilization of the HUBZone program. However, these changes are insignificant in light of the magnitude of Federal procurement versus HUBZone procurement. The Federal government spent $277 billion on goods and services in fiscal year 2003. Of this amount, $3.4 billion, or 1.23% of total procurements, was awarded to HUBZone firms. This level is significantly lower than the $8.3 billion that would have been awarded to HUBZone firms if the 3% goal set by Congress for the program had been achieved.

5. Conclusion

Most of the benefits of this interim rule will accrue to HUBZone communities. Expanded eligibility for SBCs and designated areas and increased HUBZone contacting should result in more Federal contract dollars going to distressed communities.

Overall, SBA believes that increasing the efficiency and access to the HUBZone program to both Federal agencies and small businesses will result in increased use of the program and a higher probability that the HUBZone program will meet its objectives to create jobs and increase capital investment in HUBZone communities.

SBA has determined that this interim rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

This interim rule meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have retroactive or preemptive effect.

This interim rule will not have substantial direct effects on the States,

on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this rule has no federalism implications warranting preparation of a federalism assessment.

Because this rule has been issued as an interim final, there is no requirement for SBA to prepare a Regulatory Flexibility Act analysis.

List of Subjects in 13 CFR Parts 121, 124, 125 and 126

Administrative practice and procedure, Government procurement, Small businesses.

■ For the reasons set forth above, SBA amends 13 CFR parts 121, 124, 125, and 126, as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 634(b)(6), 636(b), 637(a), 644(c) and 662(5); Sec. 304, Pub. L. 103–403, 108 Stat. 4175, 4188; Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; Pub. L. 106–24, 113 Stat. 39.

■ 2. Amend § 121.103 to add a new paragraph (b)(7) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(7) The member shareholders of a small agricultural cooperative, as defined in the Agricultural Marketing Act (12 U.S.C. 1141j), are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

* * * * *

■ 3. Revise § 121.105(a) to read as follows:

§ 121.105 How does SBA define ''business concern or concern''

(a)(1) Except for small agricultural cooperatives, a business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

(a)(2) A small agricultural cooperative is an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C.A. 1141j) whose size does not exceed the size standard established by SBA for other similar agricultural small business concerns. A small agricultural cooperative's member shareholders are not considered to be affiliates of the cooperative by virtue of their membership in the cooperative. However, a business concern or cooperative that does not qualify as small under this part may not be a member of a small agricultural cooperative.

* * * * *

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 3a. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

■ 4. Amend § 124.503 to add a new paragraph (j) as follows:

§ 124.503 How does SBA accept a procurement for award through the 8(a) BD program?

* * * * *

(j) The contracting officer should consider setting aside the requirement for HUBZone, 8(a) or SDVO SBC participation before considering to set aside the requirement as a small business set-aside.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 4a. The authority citation for part 125 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 637, 744, and 657f; 31 U.S.C. 9701, 9702.

■ 5. Revise § 125.6(e)(6) to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

* * * * *

(e) * * *

(6) *Personnel.* Individuals who are ''employees'' under § 121.106 of this chapter except for purposes of the HUBZone program, where the definition of ''employee'' is found in § 126.103 of this chapter.

* * * * *

PART 126—HUBZONE PROGRAM

■ 6. The authority citation of part 126 is revised to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p) and 657a.

■ 7. Amend § 126.103 as follows:

■ A. Add the terms and definitions for ''Base closure area,'' ''Qualified base closure area,'' and ''Small agricultural cooperative;'' and

■ B. Revise the definitions of ''HUBZone,'' paragraph (ii) of the definition of ''Qualified non-metropolitan county,'' ''Redesignated area'' and paragraphs (1), (5), (6), and (7) of the definition for ''HUBZone small business concern (HUBZone SBC).''

The added and revised terms read as follows:

§ 126.103 What definitions are important in the HUBZone Program?

* * * * *

Base closure area means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of:

(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101–510; 10 U.S.C. 2687 note);

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526; 10 U.S.C. 2687 note);

(3) 10 U.S.C. 2687; or

(4) Any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.

* * * * *

HUBZone means a historically underutilized business zone, which is an area located within one or more:

(1) Qualified census tracts;

(2) Qualified non-metropolitan counties;

(3) Lands within the external boundaries of an Indian reservation;

(4) Qualified base closure area; or

(5) Redesignated area.

HUBZone small business concern (HUBZone SBC) means an SBC that is:

(1) At least 51% owned and controlled by 1 or more persons, each of whom is a United States citizen;

* * * * *

(5) An SBC that is owned in part by one or more Indian Tribal Governments or in part by a corporation that is wholly owned by one or more Indian Tribal Governments, if all other owners are either United States citizens or SBCs;

(6) An SBC that is wholly owned by a CDC or owned in part by one or more CDCs, if all other owners are either United States citizens or SBCs; or

(7) An SBC that is a small agricultural cooperative organized or incorporated

in the United States, wholly owned by one or more small agricultural cooperatives organized or incorporated in the United States or owned in part by one or more small agricultural cooperatives organized or incorporated in the United States, provided that all other owners are small business concerns or United States citizens.

* * * * *

Qualified base closure area means a base closure area for a period of 5 years either from December 8, 2004, or from the date of final base closure, whichever is later.

* * * * *

Qualified non-metropolitan county

* * * * *

(ii) The unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor.

* * * * *

Redesignated area means any census tract or any non-metropolitan county that ceases to be a qualified HUBZone, except that such census tracts or non-metropolitan counties may be ''redesignated areas'' only until the later of:

(1) The date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(2) Three years after the date on which the census tract or non-metropolitan county ceased to be so qualified. The date on which the census tract or non-metropolitan county ceases to be qualified is the date that the official government data, which affects the eligibility of the HUBZone, is released to the public.

* * * * *

Small agricultural cooperative means an association (corporate or otherwise), comprised exclusively of other small agricultural cooperatives, small business concerns, or U.S. citizens, pursuant to the provisions of the Agricultural Marketing Act, 12 U.S.C. 1141j, whose size does not exceed the applicable size standard pursuant to part 121 of this chapter. In determining such size, an agricultural cooperative is treated as a ''business concern'' and its member shareholders are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

* * * * *

■ 8. Amend § 126.200 to revise paragraphs (a)(3) and (b)(1)(i), and to add paragraphs (c) and (d) to read as follows:

§ 126.200 What requirements must a concern meet to receive SBA certification as a qualified HUBZone SBC?

(a) * * *

(3) *Other Requirements.* The concern must either:

(i) Maintain a principal office located in a HUBZone and ensure that at least 35% of its employees reside in a HUBZone as provided in paragraph (b)(4) of this section; or

(ii) Certify that when performing a HUBZone contract, at least 35% of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjoining such Indian reservation. A HUBZone and Indian reservation are adjoining when the two areas are next to and in contact with each other; and

(iii) The concern will ''attempt to maintain'' (see § 126.103) that applicable employment percentage stated above during the performance of any HUBZone contract it receives.

(b) * * *

(1) * * *

(i) The concern must be at least 51% unconditionally and directly owned and controlled by persons who are United States citizens;

Example: A concern that is a partnership owned 50% by an individual who is a United States citizen and 50% by someone who is not, is not an eligible concern because it is not at least 51% owned by United States citizens.

* * * * *

(c) *Concerns owned by small agricultural cooperatives.* (1) *Ownership.* (i) A small agricultural cooperative organized or incorporated in the United States;

(ii) A small business concern wholly owned by one or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) A small business concern owned in part by one or more small agricultural cooperatives organized or incorporated in the United States, provided that all other owners are small business concerns or United States citizens.

(2) *Size.* The small agricultural cooperative must meet the size standard corresponding to its primary industry classification as defined in part 121 of this chapter. However, in determining such size, an agricultural cooperative is treated as a ''business concern'' and its member shareholders are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

(3) *Principal office.* The cooperative's principal office must be located in a HUBZone.

(4) *Employees.* At least 35% of the cooperative's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, round up to the nearest whole number.

(5) *Contract Performance.* The concern must represent, as provided in the application, that it will ''attempt to maintain'' (see § 126.103) having 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(d) *Subcontracting.* The concern must represent, as provided in the application, that it will ensure that it will comply with certain contract performance requirements in connection with contracts awarded to it as a qualified HUBZone SBC, as set forth in § 126.700.

* * * * *

■ 9. Amend § 126.201 by revising the example following paragraph (a) to read as follows:

§ 126.201 Who does SBA consider to own a HUBZone SBC?

* * * * *

(a) * * *

Example: U.S. citizens own all of the stock of a corporation. A corporate officer, a non-U.S. citizen, owns no stock in the corporation but owns options to purchase stock in the corporation. SBA will consider the options exercised and the individual to be an owner. Therefore, if that corporate officer has options to purchase 50% or more of the corporate stock, pursuant to § 126.200, the corporation would not be eligible to be a qualified HUBZone SBC because it is not at least 51% owned and controlled by persons who are U.S. citizens.

* * * * *

■ 10. Revise § 126.204 to read as follows:

§ 126.204 May a qualified HUBZone SBC have affiliates?

A concern may have affiliates provided that the aggregate size of the concern and all of its affiliates is small as defined in part 121 of this title, except as otherwise provided for small agricultural cooperatives in § 126.103.

■ 11. Amend § 126.304 to redesignate the current paragraph (c) as paragraph (d), and to add a new paragraph (c) to read as follows:

§ 126.304 What must a concern submit to SBA?

* * * * *

(c) Concerns applying for HUBZone status based on a location within a qualified base closure area must use

SBA's List of Qualified Base Closure Areas (located at *http://www.sba.gov/hubzone*) to verify that the location is within a qualified base closure area. If a concern disagrees with the failure of SBA's List of Qualified Base Closure Areas to include a particular area as a qualified base closure area, then the concern must submit relevant documentation from the Department of Defense, Office of Economic Adjustment, or the military department responsible for closing that installation.

* * * * *

■ 12. Revise § 126.306 as follows:

§ 126.306 How will SBA process this certification?

(a) The AA/HUB or designee is authorized to approve or decline certifications. * * * The decision of the AA/HUB or designee is the final agency decision.

■ 13. Revise § 126.503(c) as follows:

§ 126.503 What happens if SBA is unable to verify a qualified HUBZone SBC's eligibility or determines that the concern is no longer eligible for the program?

* * * * *

(c) Decertifying Pursuant to a Protest. SBA will decertify a qualified HUBZone SBC and remove its name from the List without first proposing it for decertification if the AA/HUB upholds a protest pursuant to § 126.803 and the AA/HUB's decision is not overturned pursuant to § 126.805.

■ 14. Revise § 126.607(b) and (c) to read as follows:

§ 126.607 When must a contracting officer set aside a requirement for qualified HUBZone SBCs?

* * * * *

(b) If the contracting officer determines that § 126.605 does not apply, the contracting officer shall set aside the requirement for HUBZone, 8(a) or SDVO SBC contracting before setting aside the requirement as a small business set-aside.

(c) If the contracting officer decides to set aside the requirement for competition restricted to qualified HUBZone SBCs, the contracting officer must:

(1) Have a reasonable expectation after reviewing SBA's list of qualified HUBZone SBCs that at least two responsible qualified HUBZone SBCs will submit offers; and

(2) Determine that award can be made at fair market price.

■ 15. Amend § 126.613 to redesignate the current paragraph (c) as paragraph (d), and to add a new paragraph (c) to read as follows:

§ 126.613 How does a price evaluation preference affect the bid of a qualified HUBZone SBC in full and open competition?

* * * * *

(c) For purchases by the Secretary of Agriculture of agricultural commodities for export operations through international food aid programs administered by the Farm Service Agency, the price evaluation preference shall be 5% on the first portion of a contract to be awarded that is not greater than 20% of the total volume being procured for each commodity in a single IFB.

* * * * *

■ 16. Revise § 126.700 to read as follows:

§ 126.700 What are the performance of work requirements for HUBZone contracts?

(a) A prime contractor receiving an award as a qualified HUBZone SBC must meet the performance of work requirements set forth in § 125.6(c) of this chapter.

(b) In addition to the requirements set forth in § 125.6(c), one or more qualified HUBZone SBCs must spend at least 50% of the cost of the contract incurred for personnel on its own employees or employees of other qualified HUBZone SBCs.

(1) A qualified HUBZone SBC prime contractor receiving a HUBZone contract for general construction may meet this requirement itself by expending at least 50% of the cost of the contract incurred for personnel on its employees or it may subcontract at least 35% of the cost of the contract performance incurred for personnel to one or more qualified HUBZone SBCs. A qualified HUBZone SBC prime contractor may not, however, subcontract more than 50% of the cost of the contract incurred for personnel to non-qualified HUBZone SBCs.

(2) A qualified HUBZone SBC prime contractor receiving a HUBZone contract for specialty construction may meet this requirement itself by expending at least 50% of the cost of the contract incurred for personnel on its employees or it may subcontract at least 25% of the cost of the contract performance incurred for personnel to one or more qualified HUBZone SBCs. A qualified HUBZone SBC prime contractor may not, however, subcontract more than 50% of the cost of the contract incurred for personnel to non-qualified HUBZone SBCs.

(c) A contracting officer may waive the 50% requirement set forth in paragraph (b) of this section for a particular procurement after determining that at least two qualified HUBZone SBCs cannot meet the requirement. Where a waiver is granted, the qualified HUBZone SBC prime contractor must still meet the performance of work requirements set forth in § 125.6(c) of this chapter.

Dated: June 17, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–17206 Filed 8–29–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21704; Airspace Docket No. 05–ACE–20]

Modification of Class E Airspace; Newton, KS

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 revises Class E airspace at Newton, KS.

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 21, 2005 (70 FR 41949). 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 would become effective on October 27, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 15, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–17210 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 742 and 744

[Docket No. 050822227–5227–01]

RIN A694–AD44

Removal of License Requirements for Exports and Reexports to India of Items Controlled Unilaterally for Nuclear Nonproliferation Reasons and Removal of Certain Indian Entities From the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: On July 18, 2005, President George W. Bush and Indian Prime Minister Manmohan Singh announced the completion of the Next Steps in Strategic Partnership (NSSP) with India. The proposed cooperation outlined in the NSSP has progressed through a series of reciprocal steps that built on one another, including steps related to creating the appropriate environment for successful high-technology commerce. This rule implements two steps the United States has agreed to take as part of the final phase of NSSP, namely, the removal of license requirements for exports and reexports of items controlled unilaterally by the United States for nuclear nonproliferation reasons to India and the removal of six Indian entities from the Entity List.

DATES: This rule is effective August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

In November 2001, the Indian Prime Minister and the President of the United States committed India and the United States to a strategic partnership. Since then, the two countries have significantly strengthened bilateral cooperation and commerce in space, civil nuclear energy, and dual-use technology. On January 12, 2004, the two leaders announced the NSSP with the aim of implementing a shared vision to expand cooperation, deepening the ties of commerce and friendship between the two nations, and increasing stability in Asia and beyond.

The proposed cooperation has progressed through a series of reciprocal steps that built on one another. It included expanded engagement on nuclear regulatory and safety issues and missile defense, ways to enhance cooperation regarding peaceful uses of space technology, and steps to create the appropriate environment for successful high-technology commerce. In bringing the NSSP to completion, the United States and India resolve to transform their relationship by establishing a global partnership, with the mutual commitment to promoting stability, democracy, prosperity, and peace throughout the world. This rule implements revisions to the Export Administration Regulations (EAR) as part of the completion of the NSSP.

Effects of This Rule

This rule removes export and reexport license requirements for items controlled unilaterally by the United States for nuclear nonproliferation reasons (*i.e.*, items that are not subject to the Nuclear Suppliers Group regime). The rule accomplishes this change by revising § 742.3(a)(2) to except India from this license requirement and by removing the ''X'' from the box at the intersection of the row for India and the column labeled NP 2 of the Commerce Country Chart (Supplement No. 1 to Part 738 of the EAR). Removal of export license requirements for these items is expected to reduce the number of license applications for exports and reexports to India.

This rule also removes six Indian entities from the Entity List (Supplement No. 4 to Part 744 of the EAR). Three of these entities are Department of Atomic Energy entities, ''Tarapur (TAPS 1 & 2),'' ''Rajasthan (RAPS 1& 2),'' and ''Kudankulam (1 & 2).'' TAPS 1 & 2 and RAPS 1 & 2 are under International Atomic Energy Agency (IAEA) safeguards. Kudankulam 1 & 2 is under construction. The Government of India and the IAEA have agreed that this facility will be subject to IAEA safeguards upon completion. The other three entities are Indian Space Research Organization (ISRO) subordinate entities, specifically, ''ISRO Telemetry, Tracking and Command Network (ISTRAC),'' ''ISRO Inertial Systems Unit (IISU), Thiruvananthapuram,'' and ''Space Applications Center (SAC), Ahmadabad.''

Neither the removal of the unilateral nuclear nonproliferation license requirement nor the removal of the entities from the Entity List by this rule removes any other license requirements imposed by the EAR. Among others, the end use license requirements of part 744, including the license requirements for the nuclear end uses specified in §§ 744.2, 744.5 and 744.6, and missile end use license requirements specified in §§ 744.3 and 744.6, continue to apply. This rule also does not affect license requirements related to entities that remain on the Entity List. For certain of those entities, a license is required for all items subject to the EAR; for others, a license is required for items with a classification other than (1) EAR99 or (2) where the third through fifth digits of the ECCN are ''999.'' BIS strongly urges parties to consult Supplement No. 3 to part 732 of the EAR, ''BIS's ''Know Your Customer'' Guidance and Red Flags,'' when exporting or reexporting items to India.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)) as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), continues the EAR in effect under the International Emergency Economic Powers Act (IEEPA).

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 decrease because of this regulation. BIS anticipates that this rule will reduce the number of license applications for

exports and reexports to India by about 150 to 200 annually.

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.

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

15 CFR Part 738

Exports, Foreign Trade.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, parts 738, 742 and 744 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

PART 738—[AMENDED]

■ 1. The authority citation for 15 CFR part 738 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 2, 2005, 70 FR 45273 (August 5, 2005).

Supplement No. 1 to Part 738 [Amended]

■ 2. Supplement No. 1 to part 738—(Commerce Country Chart) is amended by removing the ''X'' from the column heading NP 2 in the row for India.

PART 742—[AMENDED]

■ 3. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11,117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of November 4, 2004, 69 FR 64637 (November 8, 2004); Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 4. Section 742.3 is amended by revising paragraph (a)(2) to read as follows:

§ 742.3 Nuclear Nonproliferation.

(a) * * *

(2) If NP Column 2 of the Country Chart (Supplement No. 1 to part 738 of the EAR) is indicated in the applicable ECCN, a license is required to Country Group D:2 (see Supplement No. 1 to part 740 of the EAR) except India.

* * * * *

PART 744—[AMENDED]

■ 5. The authority citation for 15 CFR part 744 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. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 4, 2004, 69 FR 64637 (November 8, 2004); Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

Supplement No. 4 to Part 744 [Amended]

■ 6. Supplement No. 4 to part 744, under the country of India is amended by:

■ a. Removing the following subordinate entities from the entry for the Indian Space Research Organization (ISRO): ISRO Telemetry, Tracking and Command Network (ISTRAC), ISRO Inertial Systems Unit (IISU), Thiruvananthapuram, and Space Applications Center (SAC), Ahmadabad;

■ b. Adding to the entry for ''Nuclear reactors (including power plants) not under International Atomic Energy Agency (IAEA) safeguards, fuel processing and enrichment facilities, heavy water production facilities and their collocated ammonia plants,'' immediately following the word ''safeguards,'' the phrase ''(excluding Kundankulam 1 and 2)'; and

■ c. Removing, in its entirety, the second entry for the Department of Atomic Energy which reads: ''The following Department of Atomic Energy entities: Nuclear reactors (including power plants) subject to International Atomic Energy Agency (IAEA) safeguards: Tarapur (TAPS 1 & 2), and ''Rajasthan (RAPS 1 & 2).''

* * * * *

Dated: August 24, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–17241 Filed 8–29–05; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AF32

Revised Medical Criteria for Evaluating Impairments That Affect Multiple Body Systems

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving impairments that affect multiple body systems. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act (the Act). The revisions reflect current medical knowledge, methods of evaluating impairments that affect multiple body systems, treatment, and our adjudicative experience.

DATES: These regulations are effective October 31, 2005.

ADDRESSES: *Electronic Version:* The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the

Internet site for SSA (*i.e.*, Social Security Online): *http://www.socialsecurity.gov/regulations/final-rules.htm*.

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Social Insurance Specialist, Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1769 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION: We are revising and making final the rules we proposed in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on December 23, 2002 (67 FR 78196). We provide a summary of the provisions of the final rules below, with an explanation of the changes we have made from the proposed rules. We then provide a summary of the public comments and our reasons for adopting or not adopting the recommendations in the summaries of the comments in the section, ''Public Comments.'' The text of the final rules follows the preamble.

What Programs Do These Final Rules Affect?

These final rules affect disability determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these final rules also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above that results in . . .
Title II	an adult or a child	the inability to do any substantial gainful activity (SGA).
Title XVI	an individual age 18 or older	the inability to do any SGA.
TitleXVI	an individual under age 18	marked and severe functional limitations.

How Do We Decide Whether You Are Disabled?

If you are seeking benefits under title II of the Act, or if you are an adult seeking benefits under title XVI of the Act, we use a five-step ''sequential evaluation process'' to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a ''severe'' impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under SSI. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.424, 416.994, and 416.994a of our regulations. However, all of these processes include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI benefits based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe as an impairment in the listings. (See §§ 404.1526 and 416.926.)

What If You Do Not Have an Impairment(s) That Meets or Medically Equals a Listing?

We use the listings only to decide that individuals are disabled or that they are still disabled. We will not deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you are not working and you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process.'' Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended because we have changed a listing. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled a listing. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule when we decide that you have experienced medical improvement in your condition(s). (See § 416.994a(b)(2).)

Why Are We Revising the Listings for Impairments That Affect Multiple Body Systems?

We are updating the listings for impairments that affect multiple body systems to update the medical criteria in the listings, to provide more information about how we evaluate impairments that affect multiple body systems, and to reflect our adjudicative experience. We last published final rules revising the adult listings for impairments that affect multiple body systems in the **Federal Register** on May 19, 2000 (65 FR 31800); the rules were effective on June 19, 2000. We last published final rules revising the childhood listings for impairments that affect multiple body systems in the **Federal Register** on December 12, 1990 (55 FR 51204).

What Do We Mean by ''Final Rules'' and ''Prior Rules''?

Even though these rules will not go into effect until 60 days after publication of this notice, for clarity we refer to the changes we are making here as the ''final rules'' and to the rules that will be changed by these final rules as the ''prior rules.''

When Will We Start To Use These Final Rules?

We will start to use these final rules on their effective date. We will continue to use our prior rules until the effective date of these final rules. When these final rules become effective, we will apply them to new applications filed on or after the effective date of these rules and to claims pending before us, as we describe below.

As is our usual practice when we make changes to our regulations, we will apply these final rules on or after their effective date when we make a determination or decision, including those claims in which we make a determination or decision after remand to us from a Federal court. With respect to claims in which we have made a final decision, and that are pending judicial review in Federal court, we expect that the court's review of the Commissioner's final decision would be made in accordance with the rules in effect at the time of the administrative law judge's (ALJ's) decision if the ALJ's decision is the final decision of the Commissioner. If the court determines that the Commissioner's final decision is not supported by substantial evidence, or contains an error of law, we would expect that the court would reverse the final decision and remand the case for further administrative proceedings pursuant to the fourth sentence of section 205(g) of the Act, except in those few instances in which the court determines that it is appropriate to reverse the final decision and award benefits without remanding the case for further administrative proceedings. In those cases decided by a court after the effective date of the rules, where the court reverses the Commissioner's final decision and remands the case for further administrative proceedings, on remand, we will apply the provisions of these final rules to the entire period at issue in the claim.

How Long Will These Final Rules Be Effective?

These final rules will no longer be effective 8 years after the date on which they become effective, unless we extend them, or revise and issue them again.

What Revisions Are We Making With These Final Rules?

We are:

- Changing the name of this body system from ''Multiple Body Systems'' to ''Impairments That Affect Multiple Body Systems'';
- Expanding, updating, and reorganizing the guidance in the introductory text to the listings;
- Removing prior listing 110.07;
- Making conforming changes in related regulations; and
- Making nonsubstantive editorial changes.

Why Are We Changing the Name of This Body System?

We are changing the name of this body system from ''Multiple Body Systems'' to ''Impairments That Affect Multiple Body Systems'' to more accurately indicate that we use the listings in this body system to evaluate single impairments that affect two or more body systems.

How Are We Changing the Introductory Text to the Adult Multiple Body Systems Listings?

10.00—Impairments That Affect Multiple Body Systems

We are expanding, updating, and reorganizing the introductory text to provide additional guidance for evaluating impairments under this body system. A detailed description of the revised introductory text follows.

Final 10.00A—What Impairment Do We Evaluate Under This Body System?

In this section, we are expanding and clarifying prior 10.00A, ''Down syndrome (except for mosaic Down syndrome),'' and provide a description of Down syndrome. There are four subsections:

- In final 10.00A1, we explain that we evaluate non-mosaic Down syndrome under this body system.
- Final 10.00A2 is a new paragraph that describes Down syndrome and explains that it exists in ''non-mosaic'' and ''mosaic'' forms. We are revising the language we proposed in the NPRM for medical accuracy, clarity, and consistency with final 10.00A3. However, there are no substantive changes from the NPRM.

• In final 10.00A3a, we describe non-mosaic Down syndrome. Similar to the changes in final 10.00A2, we are making minor editorial revisions from the NPRM for medical accuracy and clarity. In final 10.00A3b, we explain that we evaluate non-mosaic Down syndrome under final listing 10.06. We also explain that, if you have confirmed non-mosaic Down syndrome, we consider you disabled from birth. This provision was part of prior listing 10.06, but we are moving it to the introductory text because it is not a criterion for meeting the listing. It explains only when your disability began. We are also moving the examples of common impairments associated with Down syndrome from proposed 10.00A2 to this section and revising them slightly for clarity.

• We describe mosaic Down syndrome in final 10.00A4a. In final 10.00A4b, we explain that we evaluate adults with confirmed mosaic Down syndrome under the listing criteria in any affected body system(s) on an individual case basis, and we refer to 10.00C for an explanation of how we adjudicate claims involving mosaic Down syndrome. We are making minor editorial revisions from the NPRM consistent with the changes we are making in final 10.00A2 and A3.

Final 10.00B—What Documentation Do We Need To Establish That You Have Non-Mosaic Down Syndrome?

In this section, we are expanding and modifying prior 10.00B. We explain the documentation we need to establish that you have non-mosaic Down syndrome. We are also revising this section as we proposed it in the NPRM to reflect our adjudicative experience, to eliminate an unnecessary requirement in the prior rules, and to reflect modern medical practices. We are also making minor revisions for clarity.

We proposed two paragraphs in 10.00B in the NPRM; there are three paragraphs in these final rules. In final 10.00B1, we explain the basic requirement in our disability programs that the documentation we need to establish the existence of a medically determinable impairment must come from an acceptable medical source, as defined in §§ 404.1513(a) and 416.913(a) of our regulations.

In final 10.00B2, we provide that we will find that you have non-mosaic Down syndrome based only on a report from an acceptable medical source indicating that you have the impairment when that report includes the actual laboratory report of definitive chromosomal analysis showing that you have non-mosaic Down syndrome. We define the phrase ''definitive chromosomal analysis'' as meaning karyotype analysis. Karyotype analysis is currently the most accurate and reliable indicator of the existence of non-mosaic Down syndrome. It is also the kind of analysis that is used most often and the test we refer to in our internal operating instructions.

Based on our adjudicative experience, we have determined that a report from an acceptable medical source indicating that you have non-mosaic Down syndrome that is supported by definitive chromosomal karyotype analysis is sufficient to establish the existence of non-mosaic Down syndrome. We do not additionally require a clinical description of the diagnostic physical features of the impairment when we have this evidence, as we required under the prior rules and in the NPRM, because karyotype analysis shows definitively whether you have non-mosaic Down syndrome. Chromosomal analysis has become much more common in recent years and is often in the medical evidence we obtain. This was not the case in 1990 when we published the original rules for children, the rules we used as a basis for the adult listing we first published on May 19, 2000. See 65 FR 31800. Moreover, physicians generally order chromosomal testing for Down syndrome when their clinical findings suggest that an individual might have Down syndrome, so we believe that we can reasonably presume that the diagnostic physical features are present.

In these final rules, we require the laboratory report to be submitted by an acceptable medical source because in this situation it will be the objective medical evidence we rely on to establish the existence of the medically determinable impairment. This does not mean that an acceptable medical source must conduct the actual karyotype analysis, only that an acceptable medical source must submit the evidence together with an opinion that you have non-mosaic Down syndrome.

In final 10.00B3, we explain that, when we do not have the actual laboratory report of definitive chromosomal analysis, we need evidence from an acceptable medical source that includes a clinical description of the diagnostic physical features of Down syndrome, and that is persuasive that a positive diagnosis has been confirmed by definitive chromosomal analysis at some time prior to our evaluation. This is essentially the same alternative provision that we included in prior 10.00B and in proposed 10.00B2 of the NPRM. The section includes the guidance in prior 10.00B about what we mean by medical evidence that is ''persuasive.''

We are also making other changes from proposed 10.00B2 in final 10.00B3. As in the NPRM, we include examples of other evidence that may help to establish that you have the impairment, such as your educational history or the results of psychological testing. In response to a comment, we are adding references to limitations in adaptive functioning and to mental disorders that may be associated with non-mosaic Down syndrome in these final rules because these findings are frequently in the evidence we obtain and are useful for establishing the diagnosis. We are also revising the proposed examples to remove the reference to ''the description of abnormal physical findings'' we included in the NPRM because it might be confused with the requirement for ''a clinical description of the diagnostic physical features of Down syndrome'' we included earlier in the same paragraph. Finally, we are making a number of editorial changes for clarity and for consistency with other changes that we are making in these final rules.

We are also making other nonsubstantive editorial changes throughout final 10.00B. For example, we are changing the heading of the section to refer specifically to non-mosaic Down syndrome because that is the only impairment we list in this body system. (We are not making the same change to the heading in 110.00B because the childhood listings include other multiple body system impairments.) In final 10.00B3 (proposed 10.00B2), we are also removing the phrase ''if available,'' referring to the example of psychological testing, because it is unnecessary. It is self-evident that the results of psychological testing would have to be available or we would not be able to use them.

Final 10.00C—How Do We Evaluate Other Impairments That Affect Multiple Body Systems?

In this section, we expand and clarify prior 10.00C, ''Other chromosomal abnormalities; *e.g.*, mosaic Down syndrome.'' We explain how we evaluate impairments that affect multiple body systems other than non-mosaic Down syndrome. There are three subsections:

• In final 10.00C1, we explain that, if you have a severe impairment(s) other than non-mosaic Down syndrome that affects multiple body systems, we must consider whether your impairment(s) meets the criteria of a listing in another body system. In these final rules, we are

making minor editorial changes from the NPRM for clarity. For example, instead of referring to non-mosaic Down syndrome as a ''common impairment'' that affects multiple body systems, we are clarifying that it is an impairment that ''commonly affects'' multiple body systems. Although Down syndrome occurs more commonly than other genetic disorders, it still occurs relatively rarely, in only one out of every 750–800 live births in the United States. We are also changing the word ''severe'' in the first sentence to ''significant'' because the word ''severe'' has a special meaning in our rules and this will remove any confusion about our intent.

• In final 10.00C2, we give some examples of the many other impairments that can affect multiple body systems, such as triple X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. (In an editorial change from the NPRM, we revised the reference to ''trisomy X syndrome'' from the NPRM to refer to two of the more commonly used names of the syndrome: ''triple X syndrome'' and ''XXX syndrome.'') We also explain that, because these impairments can affect various body systems, and the effects on each person can vary widely, we evaluate these impairments under the listing criteria in any affected body system on an individual case basis. Final 10.00C2 generally corresponds to prior 10.00C.

• In final 10.00C3, we explain that, if you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. If it does not, we will proceed to the fourth and, if necessary, fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920. We also explain that we follow the rules in §§ 404.1594 and 416.994, as appropriate, when we decide whether you continue to be disabled.

As in final 10.00B, we are also making nonsubstantive editorial changes from the NPRM throughout final 10.00C.

How Are We Changing the Criteria in the Listing for Non-Mosaic Down Syndrome in Adults?

Final 10.06—Non-Mosaic Down Syndrome

We are simplifying the heading to make it clear that we evaluate only non-mosaic Down syndrome under this listing. As already noted, we are also moving the last sentence of prior listing 10.06 to final 10.00A3b. Because of the changes we are making in final 10.00B2, we are revising the proposed rule toremove the requirement for ''clinical and laboratory'' findings in every case. Instead, we are requiring that you show that you have non-mosaic Down syndrome ''established as described in 10.00B.''

What Changes Are We Making for Children?

The following is an explanation of the changes we are making in part B, the listings for individuals who are under age 18. Except as described below, if we use the same criteria in both the adult and childhood rules, we are making these changes in the childhood rules for the same reasons we made the changes in the adult rules.

We describe below only the changes in the final rules in part B that are substantively different from the changes in part A. We do not describe minor, nonsubstantive differences in the language of the final rules specifically to address children.

How Are We Changing the Introductory Text to the Child Multiple Body Systems Listing?

Final 110.00A—What Kinds of Impairments Do We Evaluate Under This Body System?

In final 110.00A1, we provide a general description of the kinds of impairments we evaluate under this body system. We also provide a brief description of the effects that these impairments generally have on a child's ability to perform age-appropriate activities. We also explain that, when we use the term ''very seriously'' in these listings, we mean an ''extreme'' limitation as we define it in § 416.926a(e)(3) of our regulation for functional equivalence. To correct an error in the NPRM, we deleted the reference to mosaic Down syndrome as one of the impairments we evaluate under these listings. There is no listing for mosaic Down syndrome in these final rules.

In final 110.00A5a, we describe what we mean by ''catastrophic congenital abnormalities or diseases.'' We explain that they are present at birth and that it is reasonably certain that they will result in early death or interfere very seriously with development. In final 110.00A5b, we explain that we evaluate catastrophic congenital abnormalities or diseases under final listing 110.08.

Final 110.00B—What Documentation Do We Need To Establish That You Have an Impairment That Affects Multiple Body Systems?

We are making the same change in final 110.00B2 that we made in final 10.00B2, which provides that we will find that you have non-mosaic Down syndrome based on definitive chromosomal analysis (that is, karyotype analysis) if we have a copy of the laboratory report and it is submitted by an acceptable medical source who tells us that you have non-mosaic Down syndrome. In such cases, as in the final adult rules, we do not additionally require a clinical description of the diagnostic physical features of Down syndrome. As in final 10.00B3, we are also expanding the list of examples in final 110.00B3 to include examples of limitations in adaptive functioning or signs of a mental disorder.

Final 110.00B differs from final 10.00 because the listings in final 110.00 include other kinds of multiple body system impairments besides non-mosaic Down syndrome. Final 110.00B2a and 110.00B2b correspond to final 10.00B2 and 10.00B3. They explain we need to establish the existence of non-mosaic Down syndrome under final listing 110.06. Final 110.00B3 explains the evidence we need to establish the existence of the catastrophic congenital abnormalities and diseases we evaluate under final listing 110.08. Final 110.00B3a, explains how we document genetic disorders (such as Trisomy 13 or 18, chromosomal deletion syndromes, and genetic metabolic disorders) under final listing 110.08. Final 110.00B3b explains how we document other kinds of catastrophic congenital abnormalities (such as anencephaly and cyclopia) under final listing 110.08. In both cases, we need a clinical description of the physical abnormalities that are diagnostic for the impairments. In the case of genetic disorders under final listing 110.08, we also need the report of the definitive laboratory testing (for example, genetic analysis or evidence of biochemical abnormalities) appropriate to the impairment. However, as in the case of non-mosaic Down syndrome, we can also use a report from an acceptable medical source that is persuasive that appropriate testing was done in the past and that is consistent with the other information in the case record. In response to a comment, we are also including in final 110.00B3a examples of genetic disorders that we evaluate under final listing 110.08.

Final 110.00B is also different from final 10.00B in other ways. For example, we are not changing the heading of final

110.00B even though we changed the heading in 10.00B because we list a number of different impairments in 110.00 in addition to non-mosaic Down syndrome.

Final 110.00C—How Do We Evaluate Impairments That Affect Multiple Body Systems and That Do Not Meet the Criteria of the Listings in This Body System?

In final 110.00C2, as in the final adult rules and the NPRM, we explain that there are many other impairments that affect multiple body systems apart from the ones we include in these listings. However, because these impairments can vary widely in their effects on children, we need to evaluate their particular effects under the body system or body systems appropriate to those effects. In response to a comment about our proposed deletion of listing 110.07, we are also expanding final 110.00C2 to refer to specific categories of impairments involving multiple body systems, such as congenital anomalies, chromosomal disorders, and dysmorphic syndromes. As in the NPRM, we are also including some examples of specific impairments that can affect multiple body systems, such as triple X syndrome (XXX syndrome), fragile X syndrome, PKU, caudal regression syndrome, and fetal alcohol syndrome.

In final 110.00C3, we explain that, if you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. If your impairment(s) does not meet or medically equal a listing, we will consider whether it functionally equals the listings. In the last sentence of final 110.00C3, we explain that we use the rules in § 416.994a when we consider whether you continue to be disabled. In a change from the NPRM, we are deleting the phrase ''If you are receiving SSI payments,'' which we proposed for the beginning of the last sentence. This will clarify that we use the rules in § 416.994a whenever we consider whether you continue to be disabled. This may occur, for example, when we make a ''closed period'' determination or decision; that is, a determination or decision that you were disabled and eligible for payments at the time you filed your application for SSI but, at the same time, that you are now no longer disabled. In such a situation you will not yet have received any SSI payments.

How Are We Changing the Criteria in the Listings for Evaluating Impairments That Affect Multiple Body Systems in Children?

If the same criteria exist in both the adult and childhood rules, we are making the same changes in the childhood rules that we made for the adult rules for the same reasons we made the changes in the adult rules. The following is an explanation of the changes where they differ substantively from the final adult rules.

Final 110.01—Category of Impairments, Impairments That Affect Multiple Body Systems

Prior Listing 110.07—Multiple Body Dysfunction

We are removing prior listing 110.07 for two reasons.

- First, we established listing 110.07A in 1990 to help us evaluate physical impairments in infants and young children. However, we wrote this listing before we had the policy of functional equivalence in § 416.926a, which we first published in 1991 and have updated several times, and before we updated several listings to better evaluate impairments in such children. All children who could qualify under any of the provisions of prior listing 110.07 will continue to qualify under other listings or the rules for functional equivalence. Therefore, prior listing 110.07A has become outdated and unnecessary.
- Second, the remaining criteria, prior listings 110.07B through F, were solely reference listings that referred adjudicators to other listings in other body systems. As we update the listings in each of the body systems in the Listing of Impairments, we are removing reference listings because they are redundant.

Final Listing 110.08—A Catastrophic Congenital Abnormality or Disease

In the final rules, we provide listings for two kinds of catastrophic congenital abnormalities or diseases:

- Ones in which death usually is expected within the first months of life, and the rare individuals who survive longer are profoundly impaired (final listing 110.08A); and
- Ones that interfere very seriously with development (final listing 110.08B).

In the final listing, we are changing the references to incompatibility with ''extrauterine life'' in prior listing 110.08A and ''life outside of the uterus'' in the proposed listing to recognize that some children with the kinds of abnormalities listed may live for months or even a few years. The final language, ''Death usually is expected within the first months of life, and the rare individuals who survive longer are profoundly impaired,'' explains our intent more clearly.

In final listing 110.08B, we are changing the phrase ''attainment of the growth and development of 2 years is not expected to occur'' from the prior listing to ''interferes very seriously with development.'' This language in the final listing takes into consideration advances in the evaluation and management of these abnormalities and diseases, and will include under the listing some children with very serious limitations in development who were not included under the prior listing. This revised language is also consistent with our definition of ''extreme'' limitation in § 416.926a(e)(3). We are also clarifying in response to a comment that, for those diseases that have both infantile-onset and later-onset forms (for example, Tay-Sachs disease), only the earlier onset forms, which tend to be associated with more serious outcomes, are included under this listing.

Finally, we are making final listing 110.08 clearer and easier to understand by:

- Changing the word ''abnormalities'' from prior listing 110.08 to ''abnormality'' to emphasize that there need be only a single abnormality or disease involved.
- Removing the requirement for ''a positive diagnosis'' from prior listings 110.08A and B and instead cross-referring to 110.00B in the opening statement of final listing 110.08. This is a nonsubstantive change from the provision we proposed in the NPRM, which continued to use the phrase ''a positive diagnosis.'' We believe the phrase is unnecessary because 110.00B describes the evidence we need to establish whether a child has an impairment listed under 110.08.
- Updating, in response to a comment, the examples of ''trisomy D and trisomy E'' in final listing 110.08A to their more modern and medically accurate names, ''trisomy 13'' and ''trisomy 18,'' and updating and clarifying the examples in final listing 110.08B.

What Other Rules Are We Changing?

We are revising sections 8.00E3 and 108.00E3 in our skin body system listings for consistency with the changes we are making in final sections 10.00B and 110.00B. We recently published these final rules in the **Federal Register**. See 69 FR 32260 (June 9, 2004). In the final skin listings, we established new listings 8.07A and 108.07A for

xeroderma pigmentosum (XP), and listings 8.07B and 108.07B for other genetic photosensitivity disorders. In 8.00E3 and 108.00E3 in the introductory text to those listings, we provided rules for establishing the existence of XP and other genetic photosensitivity disorders that we based on the prior rules for establishing the existence of non-mosaic Down syndrome. Under those rules, we required both a clinical description of the impairment and evidence of definitive genetic laboratory studies establishing the impairment. See 69 FR 32263. Our reasons for the changes in these final rules for establishing the existence of non-mosaic Down syndrome apply equally to our rules for establishing the existence of XP and other genetic photosensitivity disorders. Therefore, we are revising 8.00E3 and 108.00E3 for consistency with final 10.00B and 110.00B. As in the final multiple body system listings, the changes will simplify our rules for establishing the existence of the impairments.

We are also replacing the last sentence of 101.00B2c(2), ''How we assess inability to perform fine and gross movements in very young children,'' in the introductory text of the childhood musculoskeletal body system listings, because it refers adjudicators to prior 110.07A, which we are removing from the multiple body system listings. The final provision is based on the language of 101.00B2b(2), which addresses the assessment of the ability to ambulate effectively in very young children, but in terms relevant to the inability to perform fine and gross movements in such children.

What Other Changes Are We Making?

We are making a number of editorial changes from the NPRM in these final rules. The changes simplify and clarify language, change some sentences to active voice, and improve consistency between the provisions of part A and part B. These are not substantive changes, and we do not intend for them to change the meaning of the language we proposed in the NPRM.

What Rules Are We Not Changing?

In the NPRM, we proposed to change prior § 416.934(g), which was a provision in one of our regulations about presumptive disability and presumptive blindness payments under SSI. The prior provision used language that was out-of-date. However, on August 28, 2003, we published final rules that made this change. (See ''Revised Medical Criteria for Evaluating Amyotrophic Lateral Sclerosis,'' 68 FR 51689, 51692.) Therefore, we are not including the change in these final rules because we have already made it. We did not receive any public comments about the proposed change.

Public Comments

In the NPRM we published on December 23, 2002 (67 FR 78196), we provided the public with a 60-day period in which to comment. The period ended on February 21, 2003. We mailed electronic copies to national medical organizations and professionals who have expertise in the evaluation of impairments that affect multiple body systems. As a part of our outreach efforts, we invited comments from advocacy groups and legal services organizations.

We received comments from six commenters. We carefully considered all of the comments. Because some of the comments were long, we have condensed, summarized, and paraphrased them. We have tried to summarize the commenters' views accurately, and to respond to all of the significant issues raised by the commenters that were within the scope of these rules.

Final Section 10.00B—What Documentation Do We Need To Establish That You Have Non-Mosaic Down Syndrome?

Final Section 110.00B—What Documentation Do We Need To Establish That You Have an Impairment That Affects Multiple Body Systems?

Comment: One commenter stated that the provisions of prior 10.00B and 110.00B did not permit the use of mental and adaptive behaviors to be used in conjunction with laboratory tests to confirm a probable positive diagnosis of Down syndrome. The commenter said that the wording appeared to require the description of abnormal physical findings to confirm the diagnosis in all cases. The commenter suggested that when we consider the full range of signs, symptoms, and laboratory findings we include, in addition to physical findings, mental and adaptive clinical evidence.

Response: We adopted the comment in final 10.00B3 and 110.00B2b.

Final Listings 10.06 and 110.06—Non-Mosaic Down Syndrome

Comment: A commenter said that the proposed listings were silent on the issues of how many biopsies and chromosome evaluations, and of how many different body tissues, would be necessary to absolutely and definitively rule out the presence of mosaicism. The commenter believed that we should specify how non-mosaicism must be established. The commenter asked whether a treating physician's assertion would be sufficient or a chromosomal analysis of only one body tissue and, if so, of which tissue.

Response: The standard diagnostic test for Down syndrome in both the non-mosaic and mosaic forms is a blood chromosomal (karyotype) analysis, and the great majority of people with Down syndrome have the non-mosaic form. Mosaic Down syndrome is rare: only about 1 to 2 percent of people who have Down syndrome have the mosaic form.

In these final rules, we are making clear in response to this comment that a treating physician's statement alone is not sufficient to establish whether Down syndrome is mosaic or non-mosaic, although a treating physician's statement, supported by karyotype analysis, as outlined in 10.00B2 and 110.00B2a, will be sufficient to establish that you have non-mosaic Down syndrome. Under final listings 10.06 and 110.06, either a report of definitive chromosomal analysis alone or a physician's statement that there was chromosomal testing together with the physician's description of the diagnostic physical findings will support a finding of disability.

Final Listing 110.07—Multiple Body Dysfunction

Comment: One commenter said that, although prior listing 110.07 was basically a reference listing, it served to reinforce the need to assess multiple body dysfunction regardless of the underlying condition. The commenter believed that the listing served as a valuable reminder of this basic concept, and that we should retain it, especially for adjudicators who are less experienced.

Response: We did not adopt the comment. We do not agree that the prior reference listing would be especially helpful to adjudicators, even newer ones. All children who could qualify under any of the provisions of prior listing 110.07 will continue to qualify under other listings or the rules for functional equivalence. Also, as we have already noted, because reference listings are redundant, we are removing them from all the body systems as we revise them; therefore, retaining one reference listing in this body system would be anomalous.

We did include information about the SSI childhood disability regulations in the introductory text to these final listings as a reminder about our other rules. Additionally, because the last sentence of 101.00B2c(2) in the introductory text of the childhood

musculoskeletal listings referred adjudicators to prior 110.07A, we are replacing that sentence with clearer guidance for assessing extreme limitation of fine and gross movements in very young children, similar to the guidance in 101.00B2b(2).

Final Listing 110.08—Catastrophic Congenital Abnormality or Disease

Comment: One commenter asked whether proposed listings 110.08A and B would include trisomies 8, 9, 13, and 18, as well as 21. The commenter also asked if the deletions listed under proposed listing 110.08B included the deletions for chromosomes 5, 8, 11, 13, 18, 21, and 22. Finally, the commenter asked whether our example of Tay-Sachs disease was meant to suggest that other conditions, such as medium- and long-chain dehydrogenase deficiencies, Zellweger syndrome, Niemann-Pick disease, Krabbe disease and mucolipidosis, should also be included in this category.

Response: We clarified the listing in response to this comment. We also included similar clarifications in final 110.00B3a of the introductory text.

In 110.08A, we changed the examples of trisomy D and E to their more currently accepted names, trisomy 13 and 18, respectively. Most children born with trisomy 13 or 18 die relatively shortly after birth. Trisomy 21 is Down syndrome, so it is covered under final listing 110.06.

Most of the other non-mosaic trisomy syndromes in which a lifespan beyond age 1 is generally expected are associated with profound developmental retardation, and so would be included under final listing 110.08B. However, when the clinical course of a trisomy syndrome is variable, we will evaluate the impairment under the affected body system(s).

With regard to deletion syndromes, we clarified in final 110.08B that the example of ''5p-syndrome'' (cri du chat syndrome) was an example of a deletion syndrome: ''deletion 5p syndrome.'' Any of the other chromosomal deletion syndromes that are associated with profound developmental retardation will also meet the requirements of final listing 110.08B. When the clinical course of a deletion syndrome is more variable, we will evaluate the impairment under the affected body system(s).

In response to this comment, we are also clarifying our intent in final listing 110.08B. We are clarifying that the example of Tay-Sachs disease—which is a metabolic disease (beta-hexosaminidase deficiency)—refers to the infantile onset form; we will evaluate the later onset forms of Tay-Sachs disease under the affected body systems. This policy principle will also apply to other deficiency/storage diseases, such as medium-chain dehydrogenase deficiency, Niemann-Pick disease, and Krabbe disease. The infantile onset forms, which are associated with the most serious outcomes, will meet listing 110.08B, and we will evaluate the effects of other forms under the appropriate body systems.

Other Comments

Comment: Two commenters wrote to us about impairments that they wanted us to add to the multiple body systems listings. The first commenter wanted us to include chronic granulomatous disease (CGD), which he described as an impairment that, with proper treatment, does not cause any visible manifestations but that, without treatment, can be fatal in just a few years. Because of the characteristics of the disease, the commenter believed we should make determinations of disability based on how serious a person's condition is, regardless of whether he or she receives treatment.

Similarly, the second commenter asked us to include Beckwith-Wiedemann syndrome in our listings for children. He expressed a concern that, without a listing to go by, we would have a harder time finding out the severity of the disorder.

Response: Although we agree that these impairments can be disabling, we did not adopt the comments asking us to add them to the listings. CGD exists in multiple forms with variable effects and prognoses. Beckwith-Wiedemann syndrome also varies in its clinical course and its effects on different individuals.

Regulatory Procedures

Executive Order (E.O.) 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were subject to Office of Management and Budget review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 says that no persons are required to respond to a collection of information unless it displays a valid Office of Management and Budget control number. In accordance with the Paperwork Reduction Act, SSA is providing notice that the Office of Management and Budget has approved the information collection requirements contained in sections 10.00B, 10.00C, 110.00B, and 110.00C. The Office of Management and Budget Control Number for this (these) collection(s) is 0960–0642, expiring March 31, 2008.

(Catalog of Federal Domestic Program Nos. 96–001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96–004, Social Security-Survivors Insurance; and 96–006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: May 20, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

■ 2. Item 11 in the introductory text before part A of appendix 1 to subpart P of part 404 is amended to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

11. Impairments That Affect Multiple Body Systems (10.00 and 110.00): (*Insert date 8 years after effective date of final regulations.*)

* * * * *

■ 3. The list of sections for part A is amended by revising the heading of section 10.00 to read as follows:

Part A

* * * * *

10.00 Impairments That Affect Multiple Body Systems

* * * * *

■ 4. In listing 8.00, Skin Disorders, section 8.00E3 and the introductory text of listing 8.07 are revised to read as follows:

* * * * *

E. How Do We Evaluate Genetic Photosensitivity Disorders?

* * * * *

3. *Clinical and laboratory findings.*

a. *General.* We need documentation from an acceptable medical source, as defined in §§ 404.1513(a) and 416.913(a), to establish that you have a medically determinable impairment. In general, we must have evidence of appropriate laboratory testing showing that you have XP or another genetic photosensitivity disorder. We will find that you have XP or another genetic photosensitivity disorder based on a report from an acceptable medical source indicating that you have the impairment, supported by definitive genetic laboratory studies documenting appropriate chromosomal changes, including abnormal DNA repair or another DNA or genetic abnormality specific to your type of photosensitivity disorder.

b. *What we will accept as medical evidence instead of the actual laboratory report.* When we do not have the actual laboratory report, we need evidence from an acceptable medical source that includes appropriate clinical findings for your impairment and that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. To be persuasive, the report must state that the appropriate definitive genetic laboratory study was conducted and that the results confirmed the diagnosis. The report must be consistent with other evidence in your case record.

* * * * *

8.01 Category of Impairments, Skin Disorders

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8.07 *Genetic photosensitivity disorders,* established as described in 8.00E.

* * * * *

■ 5. Listing 10.00, Multiple Body Systems, is revised to read as follows:

* * * * *

10.00 Impairments That Affect Multiple Body Systems

A. What Impairment Do We Evaluate Under This Body System?

1. *General.* We evaluate non-mosaic Down syndrome under this body system.

2. *What is Down syndrome?* Down syndrome is a condition in which there are three copies of chromosome 21 within the cells of the body instead of the normal two copies per cell. The three copies may be separate (trisomy), or one chromosome 21 copy may be attached to a different chromosome (translocation). This extra chromosomal material changes the orderly development of the body and brain. Down syndrome is characterized by a complex of physical characteristics, delayed physical development, and mental retardation. Down syndrome exists in non-mosaic and mosaic forms.

3. *What is non-mosaic Down syndrome?*

a. Non-mosaic Down syndrome occurs when you have an extra copy of chromosome 21 in every cell of your body. At least 98 percent of people with Down syndrome have this form (which includes either trisomy or translocation type chromosomal abnormalities). Virtually all cases of non-mosaic Down syndrome affect the mental, neurological, and skeletal systems, and they are often accompanied by heart disease, impaired vision, hearing problems, and other conditions.

b. We evaluate adults with confirmed non-mosaic Down syndrome under 10.06. If you have confirmed non-mosaic Down syndrome, we consider you disabled from birth.

4. *What is mosaic Down syndrome?*

a. Mosaic Down syndrome occurs when you have some cells with the normal two copies of chromosome 21 and some cells with an extra copy of chromosome 21. When this occurs, there is a mixture of two types of cells. Mosaic Down syndrome occurs in only 1–2 percent of people with Down syndrome, and there is a wide range in the level of severity of the impairment. Mosaic Down syndrome can be profound and disabling, but it can also be so slight as to be undetected clinically.

b. We evaluate adults with confirmed mosaic Down syndrome under the listing criteria in any affected body system(s) on an individual case basis, as described in 10.00C.

B. What Documentation Do We Need To Establish That You Have Non-Mosaic Down Syndrome?

1. *General.* We need documentation from an acceptable medical source, as defined in §§ 404.1513(a) and 416.913(a), to establish that you have a medically determinable impairment.

2. *Definitive chromosomal analysis.* We will find that you have non-mosaic Down syndrome based on a report from an acceptable medical source that indicates that you have the impairment and that includes the actual laboratory report of definitive chromosomal analysis showing that you have the impairment. *Definitive chromosomal analysis* means karyotype analysis. In this case, we do not additionally require a clinical description of the diagnostic physical features of your impairment.

3. *What if we do not have the results of definitive chromosomal analysis?* When we do not have the actual laboratory report of definitive chromosomal analysis, we need evidence from an acceptable medical source that includes a clinical description of the diagnostic physical features of Down syndrome, and that is persuasive that a positive diagnosis has been confirmed by definitive chromosomal analysis at some time prior to our evaluation. To be persuasive, the report must state that definitive chromosomal analysis was conducted and that the results confirmed the diagnosis. The report must be consistent with other evidence in your case record; for example, evidence showing your limitations in adaptive functioning or signs of a mental disorder that can be associated with non-mosaic Down syndrome, your educational history, or the results of psychological testing.

C. How Do We Evaluate Other Impairments That Affect Multiple Body Systems?

1. Non-mosaic Down syndrome (10.06) is an example of an impairment that commonly affects multiple body systems and that we consider significant enough to prevent you from doing any gainful activity. If you have a different severe impairment(s) that affects multiple body systems, we must also consider whether your impairment(s) meets the criteria of a listing in another body system.

2. There are many other impairments that can cause deviation from, or interruption of, the normal function of the body or interfere with development; for example, congenital anomalies, chromosomal disorders, dysmorphic syndromes, metabolic disorders, and perinatal infectious diseases. In these impairments, the degree of deviation or interruption may vary widely from individual to individual. Therefore, the resulting functional limitations and the progression of those limitations also vary widely. For this reason, we evaluate the specific effects of these impairments on you under the listing criteria in any affected body system(s) on an individual case basis. Examples of such impairments include triple X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome.

3. If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926.) If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. In that situation, we proceed to the fourth and, if necessary, the fifth step of the sequential evaluation process in §§ 404.1520 and 416.920. We use the rules in §§ 404.1594 and 416.994, as appropriate, when we decide whether you continue to be disabled.

10.01 Category of Impairments, Impairments That Affect Multiple Body Systems

10.06 *Non-mosaic Down syndrome,* established as described in 10.00B.

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■ 6. The list of sections for part B is amended by revising the heading of section 110.00 to read as follows:

Part B

* * * * *

110.00 Impairments That Affect Multiple Body Systems

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■ 7. Paragraph B2c(2) of the introductory text of section 101.00, Musculoskeletal System, of part B of appendix 1 of subpart P of part 404 is revised to read as follows:

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B. * * *

2. * * *

* * * * *

c. * * *

* * * * *

(2) *How we assess inability to perform fine and gross movements in very young children.* For very young children, we consider limitations in the ability to perform comparable age-appropriate activities involving the upper extremities compared to the ability of children the same age who do not have impairments. For such children, an extreme level of limitation means skills or performance at no greater than one-half of age-appropriate expectations based on an overall developmental assessment.

■ 8. In listing 108.00, Skin Disorders, section 108.00E3 and the introductory text of listing 108.07 are revised to read as follows:

* * * * *

E. How Do We Evaluate Genetic Photosensitivity Disorders?

* * * * *

3. *Clinical and laboratory findings.*

a. *General.* We need documentation from an acceptable medical source, as defined in §§ 404.1513(a) and 416.913(a), to establish that you have a medically determinable impairment. In general, we must have evidence of appropriate laboratory testing showing that you have XP or another genetic photosensitivity disorder. We will find that you have XP or another genetic photosensitivity disorder based on a report from an acceptable medical source indicating that you have the impairment, supported by definitive genetic laboratory studies documenting appropriate chromosomal changes, including abnormal DNA repair or another DNA or genetic abnormality specific to your type of photosensitivity disorder.

b. *What we will accept as medical evidence instead of the actual laboratory report.* When we do not have the actual laboratory report, we need evidence from an acceptable medical source that includes appropriate clinical findings for your impairment and that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing at some time prior to our evaluation. To be persuasive, the report must state that the appropriate definitive genetic laboratory study was conducted and that the results confirmed the diagnosis. The report must be consistent with other evidence in your case record.

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108.01 Category of Impairments, Skin Disorders

* * * * *

108.07 *Genetic photosensitivity disorders,* established as described in 108.00E.

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■ 9. Listing 110.00, Multiple Body Systems, of part B of appendix 1 of subpart P of part 404 is revised to read as follows:

* * * * *

110.00 Impairments That Affect Multiple Body Systems

A. What Kinds of Impairments Do We Evaluate Under This Body System?

1. *General.* We use these listings when you have a single impairment that affects two or more body systems. Under these listings, we evaluate impairments that affect multiple body systems due to non-mosaic Down syndrome or a catastrophic congenital abnormality or disease. These kinds of impairments generally produce long-term, if not lifelong, interference with age-appropriate activities. Some of them result in early death or interfere very seriously with development. We use the term ''very seriously'' in these listings to describe an ''extreme'' limitation of functioning as defined in § 416.926a(e)(3).

2. *What is Down syndrome?* Down syndrome is a condition in which there are three copies of chromosome 21 within the cells of the body instead of the normal two copies per cell. The three copies may be separate (trisomy), or one chromosome 21 copy may be attached to a different chromosome (translocation). This extra chromosomal material changes the orderly development of the body and brain. Down syndrome is characterized by a complex of physical characteristics, delayed physical development, and mental retardation. Down syndrome exists in non-mosaic and mosaic forms.

3. *What is non-mosaic Down syndrome?*

a. Non-mosaic Down syndrome occurs when you have an extra copy of chromosome 21 in every cell of your body. At least 98 percent of people with Down syndrome have this form (which includes either trisomy or translocation type chromosomal abnormalities). Virtually all cases of non-mosaic Down syndrome affect the mental, neurological, and skeletal systems, and they are often accompanied by heart disease, impaired vision, hearing problems, and other conditions.

b. We evaluate children with confirmed non-mosaic Down syndrome under 110.06. If you have confirmed non-mosaic Down syndrome, we consider you disabled from birth.

4. *What is mosaic Down syndrome?*

a. Mosaic Down syndrome occurs when you have some cells with the normal two copies of chromosome 21 and some cells with an extra copy of chromosome 21. When this occurs, there is a mixture of two types of cells. Mosaic Down syndrome occurs in only 1–2 percent of people with Down syndrome, and there is a wide range in the level of severity of the impairment. Mosaic Down syndrome can be profound and disabling, but it can also be so slight as to be undetected clinically.

b. We evaluate children with confirmed mosaic Down syndrome under the listing criteria in any affected body system(s) on an individual case basis, as described in 110.00C.

5. *What are catastrophic congenital abnormalities or diseases?*

a. Catastrophic congenital abnormalities or diseases are present at birth, although they may not be apparent immediately. They cause deviation from, or interruption of, the normal function of the body and are reasonably certain to result in early death or to interfere very seriously with development.

b. We evaluate catastrophic congenital abnormalities or diseases under 110.08.

B. What Documentation Do We Need To Establish That You Have an Impairment That Affects Multiple Body Systems?

1. *General.* We need documentation from an acceptable medical source, as defined in §§ 404.1513(a) and 416.913(a), to establish that you have a medically determinable impairment. In general, the documentation should include a clinical description of the diagnostic physical features associated with your multiple body system impairment, and any appropriate laboratory tests.

2. *Non-mosaic Down syndrome (110.06).*

a. *Definitive chromosomal analysis.* We will find that you have non-mosaic Down syndrome based on a report from an acceptable medical source that indicates that you have the impairment and that includes the actual laboratory report of definitive chromosomal analysis showing that you have the impairment. *Definitive chromosomal analysis* for Down syndrome means karyotype analysis. When we have the laboratory report of the actual karyotype analysis, we do not additionally require a clinical description of the physical features of Down syndrome.

b. *What if you have Down syndrome and we do not have the results of definitive chromosomal analysis?* When you have Down syndrome and we do not have the actual laboratory report of definitive chromosomal analysis, we need evidence from an acceptable medical source that includes a clinical description of the diagnostic physical features of your impairment, and that is persuasive that a positive diagnosis has been confirmed by definitive chromosomal analysis at some time prior to our evaluation. To be persuasive, the report must state that definitive chromosomal analysis was conducted and that the results confirmed the diagnosis. The report must be consistent with other evidence in your case record; for example, evidence showing your limitations in adaptive functioning or signs of a mental disorder that can be associated with non-mosaic Down syndrome, your educational history, or the results of psychological testing.

3. *Catastrophic congenital abnormalities or diseases (110.08).*

a. *Genetic disorders.* For genetic multiple body system impairments (other than non-mosaic Down syndrome), such as Trisomy 13 (Patau Syndrome or Trisomy D), Trisomy 18 (Edwards' Syndrome or Trisomy E), chromosomal deletion syndromes (for

example, deletion 5p syndrome, also called cri du chat syndrome), or inborn metabolic disorders (for example, Tay-Sachs disease), we need evidence from an acceptable medical source that includes a clinical description of the diagnostic physical features of your impairment, and the report of the definitive laboratory study (for example, genetic analysis or evidence of biochemical abnormalities) that is diagnostic of your impairment. When we do not have the actual laboratory report, we need evidence from an acceptable medical source that is persuasive that a positive diagnosis was confirmed by appropriate laboratory analysis at some time prior to our evaluation. To be persuasive, the report must state that the appropriate definitive laboratory study was conducted and that the results confirmed the diagnosis. The report must be consistent with other evidence in your case record.

b. *Other disorders.* For infants born with other kinds of catastrophic congenital abnormalities (for example, anencephaly, cyclopia), we need evidence from an acceptable medical source that includes a clinical description of the diagnostic physical features of the impairment.

C. How Do We Evaluate Impairments That Affect Multiple Body Systems and That Do Not Meet the Criteria of the Listings in This Body System?

1. These listings are examples of impairments that commonly affect multiple body systems and that we consider significant enough to result in marked and severe functional limitations. If your severe impairment(s) does not meet the criteria of any of these listings, we must also consider whether your impairment(s) meets the criteria of a listing in another body system.

2. There are many other impairments that can cause deviation from, or interruption of, the normal function of the body or interfere with development; for example, congenital anomalies, chromosomal disorders, dysmorphic syndromes, metabolic disorders, and perinatal infectious diseases. In these impairments, the degree of deviation or interruption may vary widely from child to child. Therefore, the resulting functional limitations and the progression of those limitations are more variable than with the catastrophic congenital abnormalities and diseases we include in these listings. For this reason, we evaluate the specific effects of these impairments on you under the listing criteria in any affected body system(s) on an individual case basis. Examples of such impairments include, but are not limited to, triple X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome.

3. If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. If your impairment(s) does not meet or medically equal a listing, we will consider whether it functionally equals the listings. (See §§ 404.1526, 416.926, and 416.926a.) When we decide whether you continue to be disabled, we use the rules in § 416.994a.

110.01 Category of Impairments, Impairments That Affect Multiple Body Systems

110.06 *Non-mosaic Down syndrome,* established as described in 110.00B.

110.08 *A catastrophic congenital abnormality or disease*, established as described in 110.00B, and:

A. Death usually is expected within the first months of life, and the rare individuals who survive longer are profoundly impaired (for example, anencephaly, trisomy 13 or 18, cyclopia);

or

B. That interferes very seriously with development; for example, cri du chat syndrome (deletion 5p syndrome) or Tay-Sachs disease (acute infantile form).

* * * * *

[FR Doc. 05–17114 Filed 8–29–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–118]

RIN 1625–AA00

Safety Zone; Northerly Island, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Stormwater Conveyance System Construction Project located off of Northerly Island, Lake Michigan, Chicago, IL. The safety zone is necessary to protect vessels and persons from potential hazards during the initial tunneling phase of the project. This phase will involve extensive blasting operations. This safety zone is intended to restrict vessels from a portion of Lake Michigan in Chicago, IL.

DATES: This rule is effective from 8 a.m. (local) on August 22, 2005 until 8 a.m. (local) on October 22, 2005. Captain of the Port Lake Michigan or the on scene Patrol Commander may terminate this event at anytime.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket (CGD09–05–118], and are available for inspection or copying at Commanding Officer, U.S. Coast Guard Marine Safety Unit Chicago, 215 W. 83rd Street Suite D, Burr Ridge, IL, 60527, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Cameron Land, U.S. Coast Guard Marine Safety Unit Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This safety zone is temporary in nature and limited time existed for an NPRM. The Coast Guard was not made aware that this event was to take place with sufficient time to allow for publication of an NPRM followed by a final rule. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and immediate action is necessary to ensure the safety of personnel and vessels during the operational period. During the enforcement of this safety zone, comments will be accepted and reviewed and may result in a modification to the rule.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and persons from the hazards associated with a construction project on a navigable waterway. The Captain of the Port Lake Michigan has determined this project in close proximity to watercraft (Burnham Harbor) pose significant risks to public safety and property. Blasting operations in close proximity to the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the blasting site will help ensure the safety of persons and property and minimize the associated risks. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his designated On-Scene Representative via VHF radio Channel 16.

Discussion of Rule

The safety zone will encompass all waters of Lake Michigan bounded by the arc of a circle with a radius of 150-feet with its center at the shoreline of Northerly Island in the approximate position 41°51′12″ N, 087°36′30″ W. These coordinates are based upon North American Datum 1983 (NAD 1983). The size of this zone was determined using the safety guidelines and safety plan provided by the construction contractor and local knowledge concerning wind, waves, and currents. All commercial and recreational vessels must contact

the Coast Guard Patrol Commander via VHF–FM Channel 16 to request permission to transit through the safety zone.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the relatively small percentage of vessels that would fall within the applicability of the regulation, the relatively small size of the limited area around the zone, the minimal amount of time that vessels will be restricted when the zone is being enforced. In addition, vessels that will need to enter the zone may request permission on a case-by-case basis from the Captain of the Port or the designated on-scene representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the safety zone in and around the area.

This proposed rule would not have a significant impact on a substantial number of small entities because the restrictions affect only a limited area for a short duration. Further, transit through the zone may be permitted with proper authorization from the Captain of the Port Lake Michigan or his designated representative. Additionally, the opportunity to engage in recreational activities outside the limits of the safety zone will not be disrupted.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–734–3247.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling

procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This safety zone fits paragraph 34(g) because it establishes a safety zone.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat.2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09.118 to read as follows:

§ 165.T09.118 Safety Zone; Northerly Island, Chicago, IL

(a) *Location.* The following is a safety zone: all waters of Lake Michigan bounded by the arc of a circle with a radius of 150-feet with its center at the shoreline of Northerly Island in the approximate position 41°51′12″ N, 087°36′30″ W (NAD 1983).

(b) *Effective time and date.* This rule is effective from 8 a.m. (local) August 22, 2005 until 8 a.m. (local) on October 22, 2005.

(c) *Regulations.* In accordance with § 165.23, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Lake Michigan, or the designated On-Scene Representative. Section 165.23 also contains other general requirements.

Dated: August 18, 2005.

H.M. Hamilton,

Commander, U.S. Coast Guard, Acting Captain of the Port Lake Michigan.

[FR Doc. 05–17160 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

CGD09–05–108

RIN 1625–AA00

Safety Zone; Celebrate Baldwinsville Fireworks, Baldwinsville, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of the Seneca River. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of the Seneca River, New York.

DATES: This rule is effective from 10 p.m. (local) until 10:30 p.m. (local) on September 17, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD09–05–108 and will be available for inspection or copying at: U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203, between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Tracy Wirth, U. S. Coast Guard Sector Buffalo, at (716) 843–9573.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 5 U.S.C. 553, a notice of rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective without publication of an NPRM in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event.

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

Discussion of Rule

The safety zone consists of all navigable waters of the Seneca River within 800 foot radius of the fireworks barge moored/anchored in approximate position 43°09′27″ N, 076°20′25″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

The Coast Guard believes this regulation will not pose any new problems for commercial vessels transiting the area. In the unlikely event that shipping is affected by this regulation, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph

10(e) of the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 10 p.m. (local) until 10:30 p.m. (local) on the day of the event. Vessel traffic can safely pass outside the safety zone during the event. In cases where traffic congestion is greater than expected and/or blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard or assisting agency escort with the permission of the Captain of the Port Buffalo. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (*see* **ADDRESSES**). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically

excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone; therefore, paragraph (34)(g) of the Instruction applies.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–108 is added to read as follows:

§ 165.T09–108 Safety Zone; NY.

(a) *Location.* The following area is a temporary safety zone: all waters of the Niagara River within an 800 foot radius of the fireworks barge moored/anchored in approximate position 43°09′27″ N, 076°20′25″ W (NAD 83).

(b) *Effective time and date.* This section is effective from 10 p.m. (local) until 10:30 p.m. (local) on September 17, 2005.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: August 4, 2005.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 05–17159 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN–86–2; FRL–7962–6]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an error in the amendatory instruction in a final rule pertaining to the Revised Format of 40 CFR part 52 for Materials Being Incorporated by Reference for Minnesota.

DATES: This final rule is effective on August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–8328, or by e-mail at *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a document on February 24, 2005 (70 FR 8930) redesignating § 52.1220 as § 52.1222, when § 52.1222 already existed. The intent of the rule was to remove the then existing § 52.1222 titled ''EPA-approved Minnesota State regulations'' and then redesignate § 52.1220 as § 52.1222. This document corrects the erroneous amendatory language.

Correction

In the final rule published in the **Federal Register** on February 24, 2005 (70 FR 8930), on page 8932 the amendatory instruction is corrected. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

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 8, 2005.

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 Y—Minnesota

§ 52.1222 [Removed]

■ 2. Section 52.1222 titled ''EPA-approved Minnesota State regulations'' is removed.

§ 52.1220 [Redesignated as § 52.1222]

■ 3. Section 52.1220 is redesignated as § 52.1222 and the section heading and paragraph (a) are revised to read as follows:

§ 52.1222 Original Identification of plan section.

(a) This section identifies the original ''Air Implementation Plan for the State of Minnesota'' and all revisions submitted by Minnesota that were federally approved prior to December 1, 2004.

* * * * *

[FR Doc. 05–17203 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 75

[OAR–2002–0056; FRL–7960–1]

RIN 2060–AJ65

Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: This action corrects and clarifies certain text of the final rule entitled ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating

Units.'' The final rule was published in the **Federal Register** on May 18, 2005 (70 FR 28606).

This action corrects certain section designations set forth in the final rule at 70 FR 28652. In addition, this action corrects certain revisions set forth in the final rule at 70 FR 28678. These corrections do not affect the substance of the action, nor do they change the rights or obligations of any party. Rather, this action merely corrects certain section designations to eliminate duplication with other rules. Thus, it is proper to issue these final rule corrections without notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial, and do not substantively change the agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

EFFECTIVE DATE: May 18, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. William Maxwell, Combustion Group, Emission Standards Division (C439–01), EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5430; fax number (919) 541–5450; electronic mail address: *maxwell.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Is the Background for the Corrections?

On May 18, 2005 (70 FR 28606), EPA issued a final rule in which EPA promulgated new source performance standards for new coal-fired electric utility steam generating units and emission guidelines for existing coal-fired electric utility steam generating units designed to limit mercury (Hg) emissions from such sources. EPA subsequently determined that certain sections of the final rule were not properly designated, *i.e.*, the numbering was not correct, and that certain rule text was not properly identified as introductory text. This action corrects those technical errors.

II. What Are the Corrections to Final Rule (70 FR 28652, 27678)?

This notice corrects the following errors. In inserting a section to 40 CFR part 60, subpart Da (*e.g.*, 40 CFR 60.45a), to incorporate emission limitations for Hg, subsequent sections were renumbered. In so doing, we inadvertently assigned section numbers to 40 CFR part 60, subpart Da, that were already in use in 40 CFR part 60, subpart Ea. To correct this error, it is necessary to renumber all of the sections in 40 CFR part 60, subpart Da, and to correct the associated internal references in the same manner. Further, in revising 40 CFR 75.6, we inadvertently indicated that we were revising entire paragraphs, rather than just the introductory text.

III. Statutory and Executive Order Reviews

Under Executive Order 12866, Regulatory Planning and Review (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 (OMB). This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the APA or any other statute, 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. 104B4). 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 the UMRA.

The corrections do not have substantial direct effects on the States, or 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, Federalism (64 FR 43255, August 10, 1999).

Today's action also does not significantly or uniquely affect the communities of Tribal governments, as specified in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The technical corrections also are not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

The corrections are not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

The corrections do not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 U.S. EPA will submit a report containing today's final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of today's action in the **Federal Register**. Today's action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on May 18, 2005.

EPA's compliance with the above statutes and EO for the underlying rule is discussed in the May 18, 2005 **Federal Register** notice containing ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units'' (70 FR 28606).

List of Subjects

40 CFR Part 60

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

40 CFR Part 75

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

Dated: August 19, 2005.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of the Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7426, and 7601.

Subpart Da—[AMENDED]

■ 2. Subpart Da is amended as follows:
■ a. Redesignating § 60.40a as § 60.40Da;
■ b. Redesignating § 60.41a as § 60.41Da;
■ c. Redesignating § 60.42a as § 60.42Da;
■ d. Redesignating § 60.43a as § 60.43Da;
■ e. Redesignating § 60.44a as § 60.44Da;
■ f. Redesignating § 60.45a as § 60.45Da;
■ g. Redesignating § 60.46a as § 60.46Da;
■ h. Redesignating § 60.47a as § 60.47Da;
■ i. Redesignating § 60.48a as § 60.48Da;
■ j. Redesignating § 60.49a as § 60.49Da;
■ k. Redesignating § 60.50a as § 60.50Da;
■ l. Redesignating § 60.51a as § 60.51Da; and
■ m. Redesignating § 60.52a as § 60.52Da.

§ 60.43Da [Amended]

■ 3. Newly redesignated § 60.43Da is amended by revising the existing reference in paragraph (f) from ''§ 60.45a'' to ''§ 60.47Da''.

§ 60.44Da [Amended]

■ 4. Newly redesignated § 60.44Da is amended as follows:
■ a. Revising the existing reference in paragraph (a) from ''§ 60.46a(j)(1)'' to ''§ 60.48Da(j)(1)'';
■ b. Revising the existing reference in paragraph (b) from ''§ 60.45a'' to ''§ 60.47Da''; and
■ c. Revising the existing reference in paragraph (d)(1) from ''§ 60.46a(k)(1)'' to ''§ 60.48Da(k)(1)''.

§ 60.45Da [Amended]

■ 5. Newly redesignated § 60.45Da is amended by:
■ a. Revising the existing reference in paragraph (a) from ''§ 60.50a(h)'' to ''§ 60.50Da(h)''; and
■ b. Revising the existing reference in paragraph (b) from ''§60.50a(g)'' to ''§60.50Da(g)''.

§ 60.47Da [Amended]

■ 6. Newly redesignated § 60.47Da is amended as follows:
■ a. Revising the existing reference in paragraph (b) from ''§ 60.43a(c)'' to ''§ 60.43Da(c)'';
■ b. Revising the existing reference in paragraph (c) from ''§ 60.43a(a)'' to ''§ 60.43Da(a)''; and
■ c. Revising the existing reference in paragraph (d) from ''§ 60.44a(a)'' to ''§ 60.44Da(a)''.

§ 60.48Da [Amended]

■ 7. Newly redesignated § 60.48Da is amended as follows:
■ a. Revising the existing references in paragraph (a) from ''§ 60.42a(a)(1)'' to ''§ 60.42Da(a)(1)'' and from ''§ 60.42a(a)(2) and (3)'' to ''§ 60.42Da(a)(2) and (3)'';
■ b. Revising the existing references in paragraph (b) from ''§ 60.44a(a)'' to ''§ 60.44Da(a)'' and from ''§ 60.44a(a)(2)'' to ''§ 60.44Da(a)(2)'';
■ c. Revising the existing references in paragraph (c) from ''§ 60.42a'' to ''§ 60.42Da'', from ''§ 60.44a'' to ''§ 60.44Da'', and from ''§ 60.45a'' to ''§ 60.45Da'';
■ d. Revising the existing reference in paragraph (d)(3) from ''§ 60.43a'' to ''§ 60.43Da'';
■ e. Revising the existing references in paragraph (e) from ''§ 60.43a'' to ''§ 60.43Da'' and from ''§ 60.44a'' to ''§ 60.44Da'';
■ f. Revising the existing references in paragraph (f) from ''§ 60.43a'' to ''§ 60.43Da'' and from ''§ 60.44a'' to ''§ 60.44Da'';
■ g. Revising the existing references in paragraph (h) from ''§ 60.49a'' to ''§ 60.49Da'', from ''§ 60.43a'' to ''§ 60.43Da'', and from ''60.44a'' to ''§ 60.44Da'';
■ h. Revising the existing references in paragraph (i) from ''§ 60.44a(d)(1)'' to ''§ 60.44Da(d)(1)'', from ''§ 60.49a(c)'' to ''§ 60.49Da(c)'', from ''§ 60.49a(l)'' to ''§ 60.49Da(l)'', and from ''§ 60.49a(k)'' to ''§ 60.49Da(k)'';
■ i. Revising the existing reference in paragraph (j) introductory text from ''§ 60.44a(a)(1)'' to ''§ 60.44Da(a)(1)'';
■ j. Revising the existing reference in paragraph (j)(1) from ''§ 60.44a(a)(1)'' to ''§ 60.44Da(a)(1)'';
■ k. Revising the existing references in paragraph (j)(2) from ''§ 60.49a'' to ''§ 60.49Da'';
■ l. Revising the existing references in paragraph (k) introductory text from ''§ 60.44a(d)(1)'' to ''§ 60.44Da(d)(1)'';
■ m. Revising the existing reference in paragraph (k)(1) from ''§ 60.44a(d)(1)'' to ''§ 60.44Da(d)(1)'';
■ n. Revising the existing reference in paragraph (k)(1)(iv) from ''§ 60.44a(d)(1)'' to ''§ 60.44Da(d)(1)'';
■ o. Revising the existing reference in paragraph (k)(2) introductory text from ''§ 60.44a(d)(1)'' to ''§ 60.44Da(d)(1)'';
■ p. Revising the existing references in paragraph (k)(2)(ii) from ''§ 60.49a'' to ''§ 60.49Da'' and from ''§ 60.49a(l)'' to ''§ 60.49Da(l)'';
■ q. Revising the existing reference in paragraph (k)(2)(iii) from ''§ 60.49a(k)'' to ''§ 60.49Da(k)'';
■ r. Revising the existing reference in paragraph (k)(2)(iv) from ''§ 60.49a(l)'' to ''§ 60.49Da(l)''; and
■ s. Revising the existing references in paragraph (l) from ''§ 60.45a'' to ''§ 60.45Da'', from ''§ 60.49a(p)'' to ''§ 60.49Da(p)'', from ''§ 60.49a(l) or (m)'' to ''§ 60.49Da(l) or (m)'', and from ''§ 60.49a(k)'' to ''§ 60.49Da(k)''.

§ 60.49Da [Amended]

■ 8. Newly redesignated § 60.49Da is amended as follows:
■ a. Revising the existing reference in paragraph (b)(2) from ''§ 60.43a(d)'' to ''§ 60.43Da(d)'';
■ b. Revising the existing references in paragraph (c)(2) from ''§ 60.51a'' to ''§ 60.51Da'';
■ c. Revising the existing reference in paragraph (g) from ''§ 60.48a'' to ''§ 60.48Da'';
■ d. Revising the existing reference in paragraph (k) from ''§ 60.44a(d)(1)'' to ''§ 60.44Da(d)(1)'';
■ e. Revising the existing reference in paragraph (l) from ''§ 60.44a(d)(1)'' to ''§ 60.44Da(d)(1)'';
■ f. Revising the existing references in paragraph (o) from ''§ 60.41a'' to ''§ 60.41Da'' and from ''§ 60.44a(a)(1) or (d)(1)'' to ''§ 60.44Da(a)(1) or (d)(1)'';
■ g. Revising the existing reference in paragraph (p) from ''§ 60.45a'' to ''§ 60.45Da'';
■ h. Revising the existing reference in paragraph (p)(4)(iii) from ''§ 60.49a(p)(4)(i)'' to ''§ 60.49Da(p)(4)(i)''; and
■ i. Revising the existing reference in paragraph (p)(4)(iv) from ''§ 60.49a(p)(4)(i)'' to ''§ 60.49Da(p)(4)(i)''.

§ 60.50Da [Amended]

■ 9. Newly redesignated § 60.50Da is amended as follows:
■ a. Revising the existing reference in paragraph (b) introductory text from ''§ 60.42a'' to ''§ 60.42Da'';
■ b. Revising the existing reference in paragraph (c) introductory text from ''§ 60.43a'' to ''§ 60.43Da'';

■ c. Revising the existing reference in paragraph (c)(5) from ''§ 60.49a(b) and (d)'' to ''§ 60.49Da(b) and (d)'';
■ d. Revising the existing reference in paragraph (d) introductory text from ''§ 60.44a'' to ''§ 60.44Da'';
■ e. Revising the existing reference in paragraph (d)(2) from ''§ 60.49a(c) and (d)'' to ''§ 60.49Da(c) and (d)'';
■ f. Revising the existing reference in paragraph (e)(2) from ''§ 60.48a(d)(1)'' to ''§ 60.48Da(d)(1)'';
■ g. Revising the existing references in paragraph (g) introductory text from ''§ 60.45a'' to ''§ 60.45Da'' and from ''§ 60.46a'' to ''§ 60.46Da'';
■ h. Revising the existing reference in paragraph (h) introductory text from ''§ 60.45a'' to ''§ 60.45Da''; and
■ i. Revising the existing reference in paragraph (h)(1) from ''§ 60.49a(p)(4)(i)'' to ''§ 60.49Da(p)(4)(i)''.

§ 60.51Da [Amended]

■ 10. Newly redesignated § 60.51Da is amended as follows:
■ a. Revising the existing references in paragraph (c) introductory text from ''§ 60.49a'' to ''§ 60.49Da'' and from ''§ 60.48a(h)'' to ''§ 60.48Da(h)'';
■ b. Revising the existing reference in paragraph (d) introductory text from ''§ 60.43a'' to ''§ 60.43Da'';
■ c. Revising the existing reference in paragraph (d)(1) from ''§ 60.48a(d)'' to ''§ 60.48Da(d)'';
■ d. Revising the existing reference in paragraph (e) introductory text from ''§ 60.43a'' to ''§ 60.43Da'';
■ e. Revising the existing reference in paragraph (e)(1) from ''§ 60.50a'' to ''§ 60.50Da''; and
■ f. Revising the existing reference in paragraph (i) from ''§ 60.42a(b)'' to ''§ 60.42Da(b)''.

§ 60.52Da [Amended]

■ 11. Newly redesignated § 60.52Da is amended by revising the existing references from ''§ 60.45a'' to ''§ 60.45Da'' and from ''§ 60.46a'' to ''§ 60.46Da''.

PART 75—[AMENDED]

■ 12. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k.

■ 13. Section 75.6 is amended by revising paragraphs (b) introductory text, (c), (d) introductory text, and (e) introductory text to read as follows:

§ 75.6 Incorporation by reference.

* * * * *

(b) The following materials are available for purchase from the American Society of Mechanical Engineers (ASME), 22 Law Drive, P.O. Box 2900, Fairfield, New Jersey 07007–2900:

* * * * *

(c) The following materials are available for purchase from the American National Standards Institute (ANSI), 25 West 43rd Street, Fourth Floor, New York, New York 10036:

(1) ISO 8316: 1987(E) Measurement of Liquid Flow in closed Conduits-Method by Collection of the Liquid in a Volumetric Tank, for appendices D and E of this part.

(2) [Reserved].

* * * * *

(d) The following materials are available for purchase from the following address: Gas Processors Association (GPA), 6526 East 60th Street, Tulsa, Oklahoma 74143:

* * * * *

(e) The following American Gas Association materials are available for purchase from the following address: ILI Infodisk, 610 Winters Avenue, Paramus, New Jersey 07652:

* * * * *

[FR Doc. 05–16927 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0121; AD–FRL–7961–9]

RIN 2060–AN09

National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Partial withdrawal of direct final rule.

SUMMARY: On July 1, 2005, the EPA issued direct final amendments to the national emission standards for hazardous air pollutants (NESHAP) for Miscellaneous Organic Chemical Manufacturing, along with a parallel proposal to be used as the basis for final action in the event EPA received any adverse comments on the direct final amendments. Because adverse comment was received, EPA is withdrawing the corresponding parts of the direct final rule. We stated in that direct final rule that if we received adverse comment by August 1, 2005, we would publish a timely withdrawal in the **Federal Register**. We will address all comments in a subsequent final rule based on the parallel proposal published on July 1, 2005. As stated in the parallel proposal, we will not institute a second comment period on this action.

DATES: As of August 30, 2005, EPA withdraws the direct final rule amendments to 40 CFR 63.2485(c)(4) and Table 1 to subpart FFFF of part 63, published on July 1, 2005 (70 FR 38554). The remaining provisions published on July 1, 2005, will be effective on August 30, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2003–0121. All documents in the docket are listed in the index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at: Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (Mail Code C504–04), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 1, 2005, we published a direct final rule (70 FR 38554) and a parallel proposal (70 FR 38562) amending the NESHAP for Miscellaneous Organic Chemical Manufacturing (40 CFR part 63, subpart FFFF). We amended the NESHAP by: Clarifying the compliance requirements for flares and the alternative standard, extending the vapor balancing alternative to cover transfers from barges to storage tanks, amending the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas, and clarifying the signature requirements for the notification of compliance status report. The direct final rule amendments also specified requirements for effluent from control devices, clarified the definition of the term continuous process vent, and

corrected several referencing and drafting errors. We stated in the preamble to the direct final rule and parallel proposal that if we received adverse comment by August 1, 2005, (or if a public hearing was requested by July 11, 2005) on one or more distinct provisions of the direct final rule, we would publish a timely notice in the **Federal Register** specifying which provisions will become effective and which provisions will be withdrawn due to adverse comment. We subsequently received adverse comment from several commenters regarding requirements for effluent from control devices. Commenters also pointed out erroneous changes made to Table 1 of subpart FFFF of part 63.

Accordingly, we are withdrawing the amendments to 40 CFR 63.2485(c)(4) and Table 1 of subpart FFFF of part 63. The amendments are withdrawn as of August 30, 2005. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action. The provisions for which we did not receive adverse comment will become effective on August 30, 2005, as provided in the preamble to the direct final rule.

List of Subjects in 40 CFR Part 63

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

Dated: August 24, 2005.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 05–17194 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7962–4]

RIN 2060–AN13

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide for the 2005 Supplemental Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: With this action EPA is taking direct final action to authorize use of 610,665 kilograms of methyl bromide for supplemental critical uses in 2005 through the allocation of additional critical stock allowances (CSAs). This allocation supplements the critical use allowances (CUAs) and CSAs previously allocated for 2005, as published in the **Federal Register** on December 23, 2004 (69 FR 76982). Further, EPA is amending the list of exempted critical uses. With today's action EPA is exempting methyl bromide for critical uses beyond the phaseout under the authority of the Clean Air Act (CAA or the Act) and in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol).

DATES: This rule is effective on October 31, 2005 without further notice, unless EPA receives adverse comment by September 29, 2005, or by October 14, 2005 if a hearing is requested. If adverse comments are received, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. If anyone contacts EPA requesting to speak at a public hearing by September 9, 2005, a public hearing will be held on September 14, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0506, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Website: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *mebr.allocation@epa.gov*.
- Fax: 202–343–2337 attn: Marta Montoro.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- Hand Delivery: EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0506. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this direct final rule, contact Marta Montoro by telephone at (202) 343–9321, or by e-mail at *mebr.allocation@epa.gov*, or by mail at Marta Montoro, U.S.

Environmental Protection Agency, Stratospheric Protection Division, (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to 1310 L St., NW., Washington, DC 20005, attn: Marta Montoro. You may also visit the Ozone Depletion web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment since EPA is not authorizing any additional new production or import of methyl bromide. The additional authorized amounts must come from inventories produced or imported prior to January 1, 2005. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to authorize 610,665 kilograms of methyl bromide for critical uses if adverse comments are filed. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

This action concerns regulation of methyl bromide pursuant to the CAA as a class I, Group VI ozone-depleting substance. Under the CAA, methyl bromide production and consumption (defined as production plus imports minus exports) were phased out on January 1, 2005, apart from certain exemptions, including the critical use exemption, which is the subject of today's rule. In a final rule published December 23, 2004 (69 FR 76982), EPA established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet approved critical uses. As part of that rule, EPA issued critical use allowances (CUAs) for new production and import and critical stock allowances (CSAs) for sale of methyl bromide stocks. In today's action, EPA is amending the list of approved critical uses of methyl bromide and issuing additional CSAs for the 2005 control period. These actions are in accordance with Decision XVI/2 of the countries that have ratified the Montreal Protocol (the ''Parties''), taken at their November 2004 meeting.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the production, import, export, sale, application and authorized use of methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers, Importers and Exporters of methyl bromide; Applicators, Distributors of methyl bromide; Users of methyl bromide, *e.g.* farmers of fruit and vegetable crops, owners of stored food commodity facilities and structures.

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR Part 82, Subpart A. If you have 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 Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under the Office of Air and Radiation Docket & Information Center, Electronic Air Docket ID No. OAR–2004–0506. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA West, 1301 Constitution Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202) 566–1742, Fax: (202) 566–1741. The materials may be inspected from 8:30 am until 4:30 pm Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

Additional supporting documents related to this action may be found in EPA's electronic docket system, docket numbers OAR–2002–0018, OAR–2003–0017, OAR–2003–0230, and in EPA's

paper docket, Air Docket ID No. A–2000–24.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number, OAR–2004–0506.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the **ADDRESSES** section of this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by fax, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment, in this instance OAR–2004–0506. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of comment period will be marked late. EPA is not required to consider these late comments. If you plan to submit comments, please also notify Marta Montoro, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 343–9321.

Information designated as Confidential Business Information (CBI) under 40 CFR, Part 2, Subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments to docket OAR–2004–0506.

ii. By Mail. Send one copy of your comments to each of the following two offices: U.S. Environmental Protection Agency, Air and Radiation Docket (6102), Electronic Air Docket ID No. OAR–2003–0230. Washington, DC 20460 and to U.S. Environmental Protection Agency, (6205J) 1200 Pennsylvania Ave., N.W., Washington, DC 20460, attn: Marta Montoro, docket no. OAR–2004–0506.

iii. By Hand Delivery or Courier. Deliver your comments to: Marta Montoro, 1310 L Street NW., Washington, DC 20005, Attention Electronic Air Docket ID No. OAR–2004–0506. Such deliveries are only accepted during the normal hours of operation 9 a.m to 5 p.m.

iv. By Facsimile. Fax your comments to both: (202) 566–1741, Attention Electronic Air Docket ID No. OAR–2003–0230, and to (202) 343–2337 or (202) 343–2338, Attention Marta Montoro, Electronic Air Docket No. OAR–2004–0506.

D. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the mail or courier addresses listed in the **FOR FURTHER INFORMATION CONTACT** Section, Electronic Air Docket ID No. OAR–2004–0506. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in

the **FOR FURTHER INFORMATION CONTACT** Section.

II. What Is the Background to the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone depleting substances can be found at 40 CFR Part 82 Subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since that time.

III. What Is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a wide variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule on the phaseout schedule for methyl bromide published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018).

The phaseout schedule for methyl bromide production and consumption was revised in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. The revised phaseout schedule was again amended to allow for an exemption for quarantine and preshipment purposes on July 19, 2001 (66 FR 37751) with an interim final rule and with a final rule (68 FR 238) on January 2, 2003. Information on methyl bromide can be found at the following sites of the World Wide Web: *http://www.epa.gov/ozone/mbr* and *http://www.unep.org/ozone* or by contacting the Stratospheric Ozone Hotline at 1–800–296–1996.

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority and by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Because of this status, a restricted use pesticide is subject to certain Federal and State requirements governing its sale, distribution, and use. Nothing in this final rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or Local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this final rule must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in today's action are intended only to implement the CAA restrictions on the production, consumption and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

IV. Legal Basis for This Action

Methyl bromide was added to the Protocol as an ozone depleting substance in 1992 through the Copenhagen amendment to the Protocol. The Parties authorize critical use exemptions through their Decisions.

The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in Section 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001, when the complete phaseout would occur (58 FR 65018). This phaseout date was established in response to a petition filed in 1991 under sections 602 (c)(3) and 606 (b) of the Clean Air Act Amendments (CAAA) of 1990, requesting that EPA list methyl bromide as a class I substance and phase out its production and consumption. This date was consistent with section 602 (d) of the CAAA of 1990, which for newly listed class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.'' EPA based its action on scientific assessments and actions by the Parties to the Montreal Protocol to freeze the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting of the Parties in Copenhagen.

At their 1995 meeting, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At this time, the U.S. continued to have a 2001 phaseout date in accordance with the CAAA of 1990 language. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide exemptions for critical uses. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in Section 604 of the CAA, 42 U.S.C. 7671c. On November 28, 2000, EPA issued regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

On December 23, 2004 (69 FR 76982), EPA published a final rule in the **Federal Register** that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from available stocks and new production or import to meet approved critical uses. Today, EPA is authorizing sale of additional amounts of methyl bromide from inventory for

critical uses in the 2005 control period. In addition, EPA is amending the existing list of approved critical uses.

Today's action reflects Decision XVI/2, taken at the Parties' Sixteenth Meeting in November 2004. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decision IX/6, which set forth criteria for review of proposed critical uses; Decision Ex. I/3, which addressed agreed critical uses, critical-use exemption levels, and allowable levels of new production and consumption for critical uses in 2005; and Decision XVI/2, which, in part, supplemented the critical use categories and exemption levels discussed in Decision Ex. I/3.

For a discussion of the relationship between the relevant provisions of the CAA and Article 2H of the Protocol, and the extent to which EPA takes into account Decisions of the Parties that interpret Article 2H, refer to the December 23, 2004 FR notice (69 FR 76984–76985). Briefly, EPA regards Decisions IX/6, Ex I/3, and XVI/2 as subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the Protocol. In today's action, EPA is following the terms of these Decisions. This will ensure consistency with the Montreal Protocol, 42 U.S.C. 7671c(d)(6).

In Decision XVI/2, taken in November 2004, the Parties to the Protocol agreed as follows: '' Section IA of the Annex to Decision XVI/2 lists the following supplemental critical use categories for the U.S.: Dried fruit and nuts; eggplant field; peppers field; tomato field; dry commodities structures (cocoa); dry commodities—processed foods, herbs, spices, dried milk; ornamentals; smokehouse ham; strawberry fruit''. These are the uses for which the U.S. requested either initial authorization or a higher critical use level in its supplemental request for 2005. EPA is amending the following uses listed in Column A of Appendix L to 40 CFR Part 82; Subpart A to reflect Decision XVI/2: Eggplant; ornamentals; peppers; strawberry fruit; tomatoes; food processing; and commodity storage. Based on the applications underlying the U.S. supplemental request, EPA is modifying Columns B and C of Appendix L to 40 CFR Part 82, Subpart A to add new approved critical users, locations of use, and limiting critical conditions.

Section IB of the Annex to Decision XVI/2 does not list a supplemental level of production or consumption for the U.S. EPA's December 23, 2004 final rule already authorizes the full amount of production and consumption approved in the Parties' prior Decision regarding critical uses in 2005, Decision Ex. I/3. Therefore, EPA is not authorizing any additional production or consumption beyond that already authorized in the December 23, 2004 final rule. Instead, EPA is authorizing sale of additional amounts of methyl bromide from inventory for critical uses in the 2005 control period. This approach is in accordance with the Parties' statement in Decision Ex I/3 that ''a Party with a critical-use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such difference between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available.''

The December 23, 2004 final rule authorized production of 7,659,000 kilograms (30% of the 1991 consumption baseline) and sale of 1,283,214 kilograms (5% of the 1991 baseline) from pre-phaseout inventories. In today's action, EPA is authorizing the sale of an additional 610,665 kilograms (2.4% of the 1991 baseline) from pre-phaseout inventories for critical uses. Thus, the total critical use amount for 2005 would be 9,552,879 kilograms, with 1,893,879 kilograms coming from pre-phaseout inventories.

V. What Is the Critical Use Exemption Process?

A. Background on Critical Use Exemption Process

Starting in 2002, EPA began notifying applicants as to the availability of an application process for a critical use exemption to the methyl bromide phaseout. The Agency published a notice in the **Federal Register** (68 FR 24737) announcing the deadline to apply, and directing applicants to announcements posted on EPA's methyl bromide Web site at *http://www.epa.gov/ozone/mbr*. Applicants were told they may apply as individuals or as part of a group of users (a ''consortium'') who face the same limiting critical conditions (*i.e.* specific conditions which establish a critical need for methyl bromide). This process has been repeated on an annual basis since then.

In response to the yearly requests for critical use exemption applications published in the **Federal Register**, applicants have provided information supporting their position that they have no technically and economically feasible alternatives to methyl bromide available to them. Applicants for the exemption have submitted information on their use of methyl bromide, on research into the use of alternatives to methyl bromide, on efforts to minimize use of methyl bromide and efforts to reduce emissions and on the specific technical and economic research results of testing alternatives to methyl bromide.

The CAA allows the Agency to create an exemption for critical uses to the extent consistent with the Protocol. The critical use exemption process is designed to meet the needs of methyl bromide users who do not have technically and economically feasible alternatives available. In EPA's recently published regulation describing the operational framework for the critical use exemption (69 FR 76982) the majority of critical uses for the 2005 calendar year were established. This action authorizes additional uses that the U.S. government submitted to the Protocol's Ozone Secretariat as a supplemental request in February 2004. In addition, EPA is adding to the number of CSAs previously allocated for the 2005 control period.

For this action, the operational framework for authorizing CSAs is described in EPA's recent regulation, published in the **Federal Register** on December 23, 2004 (69 FR 76982). All elements of the framework, such as the cap, trading provisions, and reporting and recordkeeping obligations, remain the same for this action. However, this rulemaking also allows additional quantities of methyl bromide to be made available from inventory and to augment the list of approved critical uses.

For information on EPA's calculation of CSAs, please see E–Docket OAR–2004–0506.

B. 2005 Supplemental Request

A detailed explanation of the development of the nomination, including the criteria used by expert reviewers, is available in a memo titled ''2003 Nomination Process: Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide from the United States of America'' on E–Docket OAR–2003–0230 (document 104) and E–Docket OAR–2004–0506. This memo applies equally to the 2004 Nomination, which included the supplemental request for 2005. All critical use exemption applications, including those described in the supplemental request for 2005, underwent a rigorous review by highly qualified technical experts. The CUE applications (except to the extent claimed confidential) are available on E–Docket OAR–2004–0506. Data from the applications served as the basis for

the nomination and was augmented by multiple other sources, including but not limited to the National Agricultural Statistics Service of the U.S. Department of Agriculture, the State of California Department of Pesticide Regulation, peer-reviewed articles, and crop budgets.

After submission of the first U.S. Nomination for a Critical Use Exemption for Methyl Bromide, (nomination) in February 2003, EPA and other U.S. government agencies decided to make supplemental requests in February 2004 for certain sectors that did not apply for an exemption in time for the 2003 nomination. For example, in some cases the sector consortia did not file an application during the first round of exemption applications in 2002, but instead did so in 2003. In other cases, sector consortia filed additional materials in 2003. Lastly, some sectors were incorrectly characterized in the first nomination, so EPA amended the sector chapters and amount of requests in the form of the 2005 supplemental request. The review process for the supplemental request was rigorous, with technical and economic criteria in place during the review process.

With the second nomination submitted to the Ozone Secretariat in February 2004, most of which was intended for the 2006 control period, the U.S. government included the supplemental request for 2005 in Appendix B. Appendix B was attached to each of the nomination chapters, available on E–Docket OAR–2004–0506 and *http://www.epa.gov/mbr/nomination_2006.html*. All of the supplemental requests were characterized in the corresponding chapters in the nomination, including explanations of technically and economically infeasible alternatives for each sector. The U.S. originally nominated the following new applicants for the 2005 supplemental request:

Applicant Name
California Cut Flower Commission
National Country Ham Association
Wayco Ham Company
California Date Commission
National Pest Management Association
Michigan Pepper Growers
Michigan Eggplant Growers
Burley & Dark Tobacco USA—transplant trays
Burley & Dark Tobacco USA—field grown
Virginia Tobacco Growers—transplant trays
Michigan Herbaceous Perennials
Ozark Country Hams
Nahunta Pork Center
American Association of Meat Processors

This request was subsequently modified. In August 2004, all of the tobacco applicants withdrew their CUE requests for the 2005 control period and beyond. With regard to the strawberry fruit sector, MBTOC initially recommended a reduction to the U.S. request in this sector. After being provided with additional information, MBTOC revised this recommendation, and the United States was granted a supplemental allocation to make up the difference. The U.S. also requested an additional amount for tomatoes, having received new data regarding pest pressure in two California counties. More information on each of these sectors, including calculations of production losses and other technical data, can be found in the annual nomination on E–Docket OAR–2004–0506. Memos explaining the technical contexts and corrections for both of these sectors are available on E–Docket OAR–2004–0506.

Ornamentals (California Cut Flower Commission and Florida Growers)

This request for a methyl bromide CUE was made on behalf of growers in Florida and members of the California Cut Flower Commission. The ornamentals industry is complex and growers produce multiple species and varieties in a single year. This diversity makes finding methyl bromide alternatives for each crop species very complicated. The nomination for the ornamental sector was for areas with moderate-severe pest pressure and for areas in California where critical users may be prohibited from using 1,3-dichloropropene products because local township caps for this alternative have been reached.

Dry Cured Pork Products (National Country Ham Association, American Association of Meat Processors, Nahunta Pork Center)

For this sector, EPA received several more CUE applications for the 2006 control period that were also requesting methyl bromide for the 2005 control period. It should be noted that Ozark Country Ham and Wayco Ham in the above table were eventually nominated under the National Country Ham Association. The U.S. government nomination included only facilities where dry cured ham, dry cured country ham, hard salami, pepperoni, and sausage are produced. There are no registered alternatives for this sector. The nomination was for facilities owned by the companies that are members of these associations, and for the Nahunta Pork Center.

Dried Fruit and Nuts (California Date Commission)

California produces most of the domestic supply of dates. The nomination was for peak production periods, because high volumes of dates must be processed in order to enter the market quickly for the holiday season, or if there is limited silo availability for using alternatives. Substantial time and production losses would occur if processors were relying on alternatives alone, as there is a short period after harvest in which to fumigate. The nomination is limited to Riverside county.

National Pest Management Association

The U.S. government nominated commodities and food processing plants treated by members of this association. Commodities included are processed foods, spices and herbs, cocoa, and dried milk, and other commodities that were nominated but not authorized. The nomination for facilities that are older and cannot be properly sealed in order to use a methyl bromide alternative, or for facilities that contain sensitive electronic equipment that is subject to corrosivity as a result of fumigation with a methyl bromide alternative, or in instances where heat treatment would cause a commodity to go rancid.

Michigan Pepper Growers/Michigan Eggplant Growers

EPA is including these sectors separately in Appendix L. Initially the request for eggplant and pepper growers in Michigan was included with the request for tomato growers, but the sectors are distinct. The request is for areas where fungal pathogen infestation is moderate to severe.

Michigan Herbaceous Perennials

The U.S. government nominated this group because the currently registered alternatives do not provide adequate treatment for the numerous plant species grown. Research trials for efficacy are ongoing for alternatives not yet registered. The request was for areas where pest pressure is moderate to severe. These growers comprise part of the forest seedling sector but did not submit a CUE application to EPA in 2002, during the first round. They are not currently listed in Column B of Appendix L.

The report prepared by the technical advisory body, discussed further in section V.C., is silent with regard to the 2005 request for Michigan Herbaceous Perennials. Decision XVI/2 did not authorize supplemental amounts for the seedling sector in 2005, nor did it list herbaceous perennials separately as an

agreed critical use category. Thus, Decision XVI/2 did not affect the status of Michigan Herbaceous Perennials for 2005.

C. International Review of Critical Use Exemption Nominations

The criteria for the exemption are delineated in Decision IX/6 of the Parties to the Protocol. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as ''critical'' only if the nominating Party determines that: (I) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination. The U.S. government reviews applications using these criteria and creates a package for submission to the Ozone Secretariat of the Protocol (the ''critical use nomination'' or CUN). The CUNs of various countries are then reviewed by the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP), which are independent advisory bodies to the Parties. These bodies make recommendations to the Parties regarding the nominations.

On February 7, 2004, the U.S. government submitted the second U.S. Nomination for a Critical Use Exemption for Methyl Bromide to the Ozone Secretariat of the United Nations Environment Programme. The 2005 supplemental request was submitted as Appendix B to this nomination. This supplemental request, like the remainder of the document, was based on a thorough analysis of the technical and economic feasibility of available alternatives specified by the MBTOC for each critical use and the potential for significant market disruption. The nomination can be found on E-docket on OAR–2004–0506.

In June 2004, the MBTOC sent questions to the U.S. government concerning technical and economic issues in the nomination. These questions, as well as the U.S. government's response, can be accessed on E-docket OAR–2004–0506. The U.S. government's response was transmitted on August 13, 2005. When responding to these questions, the U.S. government explained that critical use exemptions were being sought only in areas with moderate-severe pest pressure, where the use of alternatives would result in substantial yield losses, or where regulatory restrictions or geophysical conditions prohibit the adoption of alternatives. There were questions on all of the sectors described in today's action; however, many questions focused on alternatives in the overall sector instead of the specific supplemental requested amount.

In October, 2004, the MBTOC and the Technical and Economic Assessment Panel (TEAP) issued a final report on critical use nominations for methyl bromide. This report, issued by the United Nations Environment Programme (UNEP) and TEAP, is titled ''Critical Use Nominations for Methyl Bromide: Final Report'' and can be accessed at *http://www.unep.ch/ozone/teap/Reports/MBTOC/MBCUN-october2004.pdf* or on E-docket OAR–2004–0506. In Annex I of the report, the advisory bodies recommended an additional 584,093 kilograms of methyl bromide for U.S. critical uses in 2005. The additional kilograms were recommended for the following sectors: Dried fruit and nuts (dates); dry commodities/structures (cocoa beans); dry commodities/structures (processed foods, herbs and spices, dried milk and cheese processing facilities); eggplant; ornamentals; peppers; smokehouse ham; strawberry fruit; and tomatoes.

Based on the recommendations from the advisory bodies, the Parties authorized 610,655 kilograms of methyl bromide for 2005 supplemental uses in the U.S., in Decision XVI/2. The authorization adds 26,562 kilograms to the TEAP recommendation by restoring the full amount of the U.S. request for dry commodities/structures (cocoa beans). The Parties approved the above-mentioned uses referenced in the MBTOC/TEAP report.

In today's action, EPA is adding the new uses to the list of approved critical uses, and allocating additional CSAs for the sale of methyl bromide from inventory for critical uses in 2005.

EPA is also amending the Reporting and Recordkeeping Requirements in 40 CFR part 82 to require that entities report the amount of pre-phaseout methyl bromide inventory, held for sale or transfer to another entity, to the Agency on an annual basis. Entities will be required to differentiate between the amounts owned by them and those owned by other entities. Pre-phaseout refers to inventories of methyl bromide produced or imported prior to January 1, 2005. This additional requirement will allow EPA to track the drawdown of pre-phaseout inventories.

VI. Distribution of Critical Stock Allowances (CSAs)

A. Basis for Critical Stock Allowance Distribution

With today's action, EPA is allocating critical stock allowances (CSAs) to producers and importers of methyl bromide, and other entities that hold pre-phaseout quantities of methyl bromide for sale, on a pro-rated basis in relation to an average of their 2003 and 2004 holdings of inventory. Each CSA is equivalent to one kilogram of methyl bromide. Thus, an allowance holder must expend one CSA for each kilogram of methyl bromide sold to an approved critical user for approved critical uses.

The methodology for calculating the amount of CSAs for each entity is explained in a memorandum titled ''CSA Description Memo,'' available on E-docket OAR–2004–0506. In summary, EPA has used its authority under Section 114 of the CAA to require that certain regulated entities provide EPA with information about their holdings of methyl bromide.

EPA is allocating CSAs on a pro-rated basis, calculated as an average of the entities' December 31, 2003 and August 25, 2004 holdings of pre-phaseout methyl bromide as baseline. This same baseline was also used to calculate CSAs in the allocation framework rule (69 FR 76982).

EPA also notes that due to a slight baseline reporting error, one entity was granted fewer CSAs in the December, 2004 framework rule than they would have been had this reporting error not occurred. The entity has since clarified the data submitted to EPA. Therefore, EPA is granting this entity sufficient CSAs from the 610,665 supplemental amount to make up the difference and is calculating the distribution of the supplemental CSAs based on the revised baseline. The total amount for distribution using the revised baseline is 610,665 kilograms minus the amount granted off the top to correct the earlier distribution.

B. Distribution of Critical Stock Allowances

Allocated CSAs are granted for a specified control period. EPA is allocating CSAs to the following companies for the 2005 supplemental authorized amounts of critical use methyl bromide.

Company
Albemarle
Ameribrom, Inc.
Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products

Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros.
Great Lakes Chemical Corporation
Harvey Fertilizer and Gas
Helena Chemical Co.
Hendrix and Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corporation
ProSource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical, Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation
Total 610,665 Kilograms

EPA has determined that the individual holdings of stocks of methyl bromide are confidential business information. The amount of CSAs allocated to each company could be used to calculate the individual stock holdings if information on aggregate stock holdings were released. EPA has determined that the aggregate stock information is not confidential business information but is currently withholding that information due to the filing of complaints seeking to enjoin the Agency from its release. Because release could occur depending on the outcome of that litigation, EPA is not listing the number of allowances proposed for distribution to each entity. EPA is placing a document listing the proposed allocations and distribution basis of CSAs for each entity in the confidential portion of the docket.

With today's action, EPA is determining that 610,665 kgs of methyl bromide are required to satisfy critical uses for the 2005 supplemental request. As discussed in Section VII, the amount of the U.S. supplemental request is based on applications received, public and private databases, and a rigorous technical review. EPA is authorizing those entities that hold inventories of methyl bromide to sell an additional 610,665 kgs for approved supplemental critical uses during 2005.

EPA is also clarifying 40 CFR 82.4 (p)(2), which was added to § 82.4 by the final allocation framework rule published on December 23, 2004 (69 FR 76982). Specifically, paragraph (p)(2)(vi) states that, with some exceptions: ''No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide for the same use (as defined in Columns A and B of Appendix L) in the same control period.'' However, EPA did not intend this prohibition to prevent end users who have been using non-critical use methyl bromide during the first part of 2005 from using critical use methyl bromide on the same field or structure for the same use if they became approved critical users as a result of this supplemental rulemaking. Such a result would deprive those end users of the benefit of the exemption solely as a result of the timing of the rule. Thus, EPA is adding the following exception to paragraph (p)(2)(vi): ''or unless, subsequent to that person's use of the non-critical use methyl bromide, that person * * * (b) becomes an approved critical user as a result of rulemaking.'' EPA is also proposing to make a corresponding change to § 82.13, paragraph (2)(dd), which describes the self-certification process for approved critical users: '' * * * I am aware that any agricultural commodity within a treatment chamber, facility, or field I fumigate with critical use methyl bromide cannot subsequently be fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment or a treatment for a different use * * * unless a local township cap limit now prevents me from using methyl bromide alternatives, or I have now become an approved critical user as a result of rulemaking.''

C. Type of Critical Stock Allowances: Universal

During the proposal and finalization of EPA's previous regulatory action concerning the operational framework for methyl bromide allocation (69 FR 76982), EPA considered several options for authorizing CSAs and CUAs. For CUAs, EPA co-proposed two options for the cap on critical use methyl bromide: a universal cap where all approved critical uses would purchase critical use methyl bromide and a sector-specific cap where each of the 16 critical use sectors would have their own cap of reserved material. In addition, EPA raised the possibility of adopting various hybrid options. The universal cap was supported by most public commenters because of the ease of implementation and cost savings and efficiencies to the regulated community. In the final rulemaking, EPA established two types of CUAs: one for pre-plant soil uses and the other for post-harvest, structural uses.

However, the portion of critical use methyl bromide to come from stocks was both proposed and finalized as a universal cap. EPA received no adverse comment to the proposal to make the quantities from stocks available in a universal fashion.

Paragraph 3 of Decision XVI/2 states that ''Parties should endeavour to ensure that the quantities of methyl bromide recommended by the Technology and Economic Assessment Panel are allocated as listed in Sections IA [2005 quantities] and IIA [2006 quantities] to the annex to the present decision.'' Similar language appeared in Decision Ex I/3. As described in the December 23, 2004 **Federal Register** notice (69 FR 76982), there would be significant administrative and practical difficulties associated with a sector-specific cap. Therefore, EPA has arrived at an allocation system that relies at least partly on the market to allocate quantities on a sectoral basis. EPA anticipates, based on historical use patterns and the research undertaken pursuant to submitting the U.S. nomination, that usage patterns will generally reflect the sectoral quantities found in the relevant annexes to Decisions Ex I/3 and XVI/2.

Therefore, in today's action, EPA is allocating the additional CSAs totaling 610,665 kilograms of critical use methyl bromide, for calendar year 2005, in a universal fashion.

VII. Supplemental Additional Critical Uses for Calendar Year 2005

Based on EPA's assessment of the technical and economic feasibility of alternatives and the potential for a significant market disruption if methyl bromide were not available for the uses proposed for addition in Appendix L, and the lack of any new information received since the submission of the U.S. supplemental request that would change EPA's assessment, EPA is adding new uses to Appendix L as reflected in the table below. EPA is authorizing the additional critical uses for the year 2005 as well as conditions that make these uses ''critical.'' This proposal is based on the data submitted by critical use exemption applicants, as well as public and proprietary data sources.

During the development of the nomination, EPA determined that the following additional uses with the limiting critical conditions specified below qualify to obtain and use critical use methyl bromide. EPA also does not believe that the technical and economic data have changed significantly since submitting the nomination. Therefore EPA believes that the amounts nominated in February 2004 and authorized by the Parties in November 2004 reflect the best available data. However, EPA welcomes submissions of current information regarding

substitutes and alternatives for these uses.

In June 2004, MBTOC submitted questions to the U.S. government about the nomination. While these questions did not specifically concern the supplemental request for 2005, the questions concerned all of the sectors in the supplemental request except for dried fruit and nuts (dates). The questions predominately focused on alternatives to methyl bromide and requested further clarification on points made in the nomination. All of the MBTOC questions and the U.S. government responses, submitted on August 13, 2004, are available on E-docket OAR–2004–0506.

Amendments to Appendix L of CFR Part 82

The following table shows the additions to Appendix L of CFR Part 82.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
PRE-PLANT USES		
Eggplant	Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.
Ornamentals (Cut flowers)	California Cut Flower Commission and Florida growers.	With a reasonable expectation that moderate to severe pest pressure either already exists or could occur without methyl bromide fumigation, or with reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
Peppers (field)	Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation either already exists or could occur without methyl bromide fumigation.
Strawberry fruit	California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, moderate to severe yellow or purple nutsedge infestation, a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative, hilly terrain that prevents the distribution of alternative.
Tomatoes	California growers in San Diego and Ventura counties.	With a reasonable expectation that moderate to severe pest pressure either already exists or could occur or where alternatives are ineffective because of hilly terrain.
POST-HARVEST USES		
Food processing	Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs, spices, and dried milk).	With reasonable expectation that one or more of the following limiting critical conditions exists: Older facilities that cannot be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, or where heat treatment would cause rancidity to commodities, time to transition to an alternative.
Dried Fruit and Nuts—(dates only)	Growers and packers who are members of the California Date Commission, whose facilities are located only in Riverside County.	With a reasonable expectation that one or more of the following limiting critical conditions exists: Rapid fumigation is required to meet a critical market window such as during the holiday season, rapid fumigation is required when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.
Dry Cured Pork Products	(A) Members of the National Country Ham Association.	Pork product facilities who are owned by companies that are members of the Association.
	(B) Members of the American Association of Meat Processors.	Pork product facilities owned by companies that are members of the Association.
	(C) Nahunta Pork Center (North Carolina).	

Summary of Supporting Analysis

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in the Executive Order.

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

This action will likely have a minor cost savings associated with its implementation, but the Agency did not conduct a formal analysis of savings given that such an analysis would have resulted in negligible savings. This action represents the authorization only 2.5% of 1991 consumption baseline of methyl bromide to be made available for critical uses.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2179.03. This rule supplements the rule published in the **Federal Register** on December 23, 2004 (69 FR 76982). The information collection under these rules is authorized under Sections 603(b), 603(d) and 614(b) of the Clean Air Act (CAA).

The mandatory reporting requirements included in these rules are intended to:

(1) Satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(2) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(3) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

In this rule, EPA is amending the Reporting and Recordkeeping Requirements in 40 CFR part 82 to require that entities report the amount of pre-phaseout methyl bromide inventory, held for sale or for transfer to another entity, to the Agency on an annual basis. Pre-phaseout refers to inventories of methyl bromide produced or imported prior to January 1, 2005. This additional requirement will allow EPA to track the drawdown of pre-phaseout inventories.

Collection activity	Number of respondents	Total number of responses	Hours per response	Total hours
Rule Familiarization	54	54	.5	27
Data Compilation (annual basis)	54	54	.5	27
Data Reporting (annual basis)	54	54	.5	27
Total Burden Hours		162		81

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

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; process and maintain information; disclose and provide 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 are listed in 40 CFR part 9 and 48 CFR Chapter 15.

When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in these rules.

To obtain comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Electronic Docket ID number OAR–2004–0506. Submit any comments related to the rule ICR for this rule to EPA and OMB. See **ADDRESSES** Section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington DC 20503 attn: Desk Officer for EPA. Include the EPA ICR number 2179.03 in correspondence related to this ICR.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 30, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by September 29, 2005. The final rule will respond to any OMB or public concerns on the information collection requirements contained in this rule.

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS Code	SIC Code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural Production ..	1112—Vegetable and Melon farming	0171—Berry	0.75
	1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops	
		0181—Ornamental Floriculture and Nursery products.	
Storage Uses	115114—Postharvest crop activities (except Cotton Ginning).	4221—Farm Product Warehousing and Storage	21.5
	493110—General Warehousing and Storage	4225—General Warehousing and Storage	
	493130—Farm product Warehousing Storage ...		

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. Based on the data provided, EPA estimates that there are 3,218 entities that petitioned EPA for an exemption. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that between ¼ to ⅓ of the entities may be small businesses based on the definition given above. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this rule are primarily agricultural entities, producers, importers, and distributors of methyl bromide, as well as any entities holding inventory of methyl bromide.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' (5 U.S.C. 603–604). Thus, an Agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule will make additional methyl bromide available for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million to $30 million annually, as a result of the entire critical use exemption program over its projected duration. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local and tribal governments, in the aggregate, or by 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 of 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 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 this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or by the private sector, in any one year. Today's action contains only one new mandate, which is the reporting requirement for the drawdown of pre-phaseout inventories. Today's amendment does not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local, and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under Section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under Section 204.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State

and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This 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. Today's rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. 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 rule does not have tribal implications, as specified in Executive Order 13175. The rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. The National Technology Transfer and Advancement Act

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

J. Congressional Review Act

The Congressional Review Act, 5, U.S.C 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 31, 2005.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Methyl Bromide, Ozone, Reporting and Recordkeeping requirements, Treaties.

Dated: August 23, 2005.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 82 is to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.4 is amended by revising paragraph (p)(2)(vi) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(p) * * *

(2) * * *

(vi) No person who purchases critical use methyl bromide during the control period shall use that methyl bromide on a field or structure for which that person has used non-critical use methyl bromide for the same use (as defined in Columns A and B of Appendix L) in the same control period, excepting methyl bromide used under the quarantine and pre-shipment exemption, unless, subsequent to that person's use of the non-critical use methyl bromide, that person (a) becomes subject to a prohibition on the use of methyl bromide alternatives due to the reaching of a local township limit described in Appendix L of this part, or (b) becomes an approved critical user as a result of rulemaking.

* * * * *

■ 3. Section 82.8 is amended by revising paragraph (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2005 on a pro-rata basis in relation to the stocks held by each.

Company
Albemarle
Ameribrom, Inc.

Bill Clark Pest Control, Inc.
Blair Soil Fumigation
Burnside Services, Inc.
Cardinal Professional Products
Carolina Eastern, Inc.
Degesch America, Inc.
Dodson Bros. Products
Great Lakes Chemical Corporation
Harvey Fertilizer and Gas
Helena Chemical Co.
Hendrix and Dail
Hy Yield Bromine
Industrial Fumigation Company
J.C. Ehrlich Co.
Pacific Ag
Pest Fog Sales Corporation
ProSource One
Reddick Fumigants
Royster-Clark, Inc.
Southern State Cooperative, Inc.
Trical, Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar
Vanguard Fumigation Co.
Western Fumigation
Total 1,893,879 Kilograms

■ 4. Section 82.13 is amended by revising paragraph (g)(4) introductory text, paragraphs (bb)(2)(iv), (cc)(2)(iv), and (dd) and by adding paragraphs (f)(3)(xviii), (g)(4)(xix), (bb)(2)(v) and (cc)(2)(v) to read as follows:

§ 82.13 Recordkeeping and Reporting Requirements for class I controlled substances.

* * * * *

(f) * * *

(3) *Reporting Requirements—Producers.* For each quarter, except as specified in this paragraph (f)(3), each producer of a class I controlled substance must provide the Administrator with a report containing the following information:

* * * * *

(xviii) Producers shall report annually the amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

(g) * * *

(4) *Reporting Requirements—Importers.* For each quarter, except as specified in this paragraph (g)(4), every importer of a class I controlled substance (including importers of used, recycled or reclaimed controlled substances) must submit to the Administrator a report containing the following information:

* * * * *

(xix) Importers shall report annually the amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

* * * * *

(bb) * * *

(2) * * *

(iv) The number of unexpended and expended critical stock allowances;

(v) The amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

* * * * *

(cc) * * *

(2) * * *

(iv) The number of unexpended and expended critical stock allowances;

(v) The amount of methyl bromide produced or imported prior to the January 1, 2005 phaseout date owned by the reporting entity, as well as quantities held by the reporting entity on behalf of another entity, specifying the name of the entity on whose behalf the material is held.

* * * * *

(dd) Every approved critical user purchasing an amount of critical use methyl bromide or purchasing fumigation services with critical use methyl bromide must, for each request, identify the use as a critical use and certify being an approved critical user. The approved critical user certification will state, in part: I certify, under penalty of law, ''I am an approved critical user and I will use this quantity of methyl bromide for an approved critical use. My action conforms to the requirements associated with the critical use exemption published in 40 CFR part 82. I am aware that any agricultural commodity within a treatment chamber, facility, or field I fumigate with critical use methyl bromide can not subsequently or concurrently be fumigated with non-critical use methyl bromide during the same control period, excepting a QPS treatment or a treatment for a different use (*e.g.*, a different crop or commodity). I will not use this quantity of methyl bromide for a treatment chamber, facility, or field that I previously fumigated with non-critical use methyl bromide purchased during the same control period, excepting a QPS treatment or a treatment for a different use (*e.g.*, a different crop or commodity), unless a local township limit now prevents me from using methyl bromide alternatives or I have now become an approved critical user as a result of rulemaking.'' The certification will also indicate the type of critical use methyl bromide purchased, the location of the treatment, the crop or commodity treated, the quantity of critical use methyl bromide purchased, the acreage/square footage treated and will be signed and dated by the approved critical user.

Appendix L—[Amended]

■ 5. Appendix L is revised to read as follows:

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
PRE-PLANT USES		
Cucurbits	(a) Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation already either exists or could occur without methyl bromide fumigation.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, and Virginia growers.	With a reasonable expectation that moderate to severe yellow or purple nutsedge infestation already either exists or could occur without methyl bromide fumigation.
Eggplant	(a) Georgia growers	With a reasonable expectation that moderate to severe yellow or purple nutsedge infestation either already exist or could occur without methyl bromide fumigation.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions either already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(c) Michigan Growers	With a reasonable expectation that moderate to severe fungal pathogen infestation already either exists or could occur without methyl bromide fumigation.
Forest Seedlings	(a) Members of the Southern Forest Nursery Management Cooperative limited to growing locations in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Arkansas, Alabama, Georgia, South Carolina and Texas.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(c) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, South Carolina, Oregon, and Washington.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(d) Public (government owned) seedling nurseries in the states of California, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, Utah, Washington, West Virginia and Wisconsin.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(e) Members of the Nursery Technology Cooperative limited to growing locations in Oregon and Washington.	With a reasonable expectation that one or more of the following limiting critical conditions already either exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
	(f) Michigan seedling nurseries	With a reasonable expectation that one or more of the following limiting critical conditions already exist or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or moderate to severe disease infestation.
Ginger	Hawaii growers	With a reasonable expectation that the limiting critical condition already either exists or could occur without methyl bromide fumigation, or moderate to severe bacterial wilt infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's raspberries and their contract growers in California and Washington).	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers.	With a reasonable expectation that one or more of the following of limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
	(c) Members of the California Association of Nurserymen-Citrus and Avocado Growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe nematode infestation, medium to heavy clay soils, or a prohibition of on the use of 1,3-dichloropropene products due to reaching local township limits on the use of this alternative.
Orchard Replant	(a) California stone fruit growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
	(b) California table and raisin grape growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California walnut growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(d) California almond growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: replanted (non-virgin) orchard soils to prevent orchard replant disease, or medium to heavy soils, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
Ornamentals	(a) Yoder Brothers Inc. in Florida	For use in all chrysanthemum production.
	(b) California rose nurseries	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(c) California Cut Flower Commission Growers and Florida Growers.	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.
Peppers	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, or moderate to severe yellow or purple nutsedge infestation, or a prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee and Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
	(c) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(d) Michigan growers	With a reasonable expectation that moderate to severe fungal pathogen infestation already either exists or could occur without methyl bromide fumigation.
Strawberry Nurseries	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, or moderate to severe yellow or purple nutsedge infestation.
	(b) North Carolina and Tennessee growers.	With a reasonable expectation that the use will occur in the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
Strawberry Fruit	(a) California growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe black root rot or crown rot, moderate to severe yellow or purple nutsedge infestation, a prohibition of the use of 1,3-dichloropropene products because local township limits for this alternative have been reached, time to transition to an alternative.
	(b) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or karst topography.
	(c) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee, Virginia, Ohio and, New Jersey growers.	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
Sweet Potatoes	California growers	With a reasonable expectation that the user may be prohibited from using 1,3-dichloropropene products because local township limits for this alternative have been reached.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
Tomatoes	(a) Michigan growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe disease infestation, fungal pathogens infestation.
	(b) Alabama, Arkansas, Georgia, North Carolina, South Carolina, Tennessee Virginia growers.	With a reasonable expectation that one or more of the following limiting critical conditions and already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or the presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less.
	(c) Florida growers	With a reasonable expectation that one or more of the following limiting critical conditions already either exists or could occur without methyl bromide fumigation: moderate to severe yellow or purple nutsedge infestation, or karst topography.
	(d) California growers in San Diego and Ventura.	With a reasonable expectation that moderate to severe pest counties pressure exists and where alternatives are ineffective because of hilly terrain.
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI).	For the production of industry certified pure sod.
	(b) U.S. golf courses	For establishing sod in the construction of new golf courses or the renovation of putting greens, tees, and fairways.
POST–HARVEST USES		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute. (For today's rule, "pet food" refers to domestic dog and cat food).	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(c) Kraft Foods in the U.S	With a reasonable expectation that one or more of the following limiting critical conditions exists: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(d) Members of the North American Millers' Association in the U.S..	With a reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: older structures that can not be properly sealed to use an alternative to methyl bromide, or the presence of sensitive electronic equipment subject to corrosivity, time to transition to an alternative.
	(e) Members of the National Pest Management Association (associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs, spices, and dried milk).	With reasonable expectation that one or more of the following limiting critical conditions already exists or could occur without methyl bromide fumigation: older structures that cannot be properly sealed in order to use an alternative to methyl bromide, or the presence of electronic equipment that is subject to corrosivity, or where heat treatment would cause rancidity to a particular commodity, time to transition to an alternative.
Commodity Storage	(a) Gwaltney of Smithfield in the U.S..	For smokehouse ham curing facilities owned by the company.
	Dry cured pork products: (b) Members of the National Country Ham Association.	Pork product facilities who are members of the Association.
	Dry cured pork products: (c) Members of the American Association of Meat Processors.	Pork product facilities who are members of the Association.
	Dry cured pork products: (d) Nahunta Pork Center.	For facilities owned by the company.
	(b) California entities storing walnuts, beans, dried plums, figs, raisins, and pistachios in California.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

Column A Approved critical uses	Column B Approved critical user and location of use	Column C Limiting critical conditions
	(c) Growers and packers who are members of the California Date Commission, whose facilities are located in Riverside County.	With a reasonable expectation that one or more of the following limiting critical conditions exists: rapid fumigation is required to meet a critical market window, such as during the holiday season, when a buyer provides short (2 days or less) notification for a purchase, or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

[FR Doc. 05–17191 Filed 8–29–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15073]

RIN 2127–AI67

Federal Motor Vehicle Safety Standards; Motorcycle Controls and Displays

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

ACTION: Final rule.

SUMMARY: In this document, we (NHTSA) amend the Federal motor vehicle safety standard on motorcycle controls and displays to require that the rear brake control on scooters without a clutch be located on the left handlebar. In doing so, we have selected the second of two alternative proposals that were set forth in a notice of proposed rulemaking published in November 2003. This final rule also includes requirements for motorcycles with single-point (combined) braking for supplemental rear brake controls.

This final rule also makes two additional minor changes to the standard. The first change removes a potentially confusing abbreviation, and the second change clarifies requirements for motorcycle speedometer labeling.

DATES: This final rule takes effect August 30, 2006. Optional compliance is available as of August 30, 2005.

Any petitions for reconsideration of today's final rule must be received by NHTSA no later than October 14, 2005.

ADDRESSES: Petitions for reconsideration of today's final rule should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mr. Michael Pyne, Office of Crash Avoidance Standards at (202) 366–4171. His fax number is (202) 366–7002.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her fax number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

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I. What Does FMVSS No. 123 Require at Present?

Federal Motor Vehicle Safety Standard (FMVSS) No. 123, *Motorcycle Controls and Displays,* specifies requirements for the location, operation, identification, and illumination of motorcycle controls and displays. The purpose of FMVSS No. 123 is to minimize accidents caused by operator error in responding to the motoring environment, by standardizing certain motorcycle controls and displays.

Among other requirements, FMVSS No. 123 (at S5.2.1, Table 1) requires the control for a motorcycle's rear brakes to be located on the right side of the motorcycle and be operable by the rider's right foot. Section S5.2.1 at Table 1 also requires the control for a motorcycle's front brakes to be located on the right handlebar.

Although the rear brake control is generally operated by the rider's right foot, FMVSS No. 123 permits a ''motor-driven cycle'' [1] to have its rear brake controlled by a lever on the left handlebar. FMVSS No. 123 also states that, if a motorcycle has an ''automatic clutch'' (*i.e.,* a transmission which eliminates the need for a clutch lever) and a supplemental rear brake control (in addition to the right foot control), the supplemental control must be located on the left handlebar. If a motorcycle is equipped with a single control for both the front and rear brakes, that control must be located and operable in the same manner as a rear brake control.

[1] ''A motorcycle with a motor that produces five brake horsepower or less'' (49 CFR 571.3).

II. How This Rulemaking Began—Granting Vectrix's Petition

As described in the notice of proposed rulemaking (NPRM) published in the **Federal Register** (68 FR 65667) on November 21, 2003, this rulemaking began with NHTSA's decision to grant a petition for rulemaking from Vectrix Corporation. We granted the petition in light of a number of petitions we received requesting temporary exemption from the rear brake location requirement of FMVSS No. 123, *i.e.,* temporary exemptions from S5.2.1 (Table 1) of FMVSS No. 123. These petitions have come from manufacturers of scooters with automatic transmissions and handlebar-mounted brake controls, which is a common arrangement for scooters sold in Europe, Asia, and other parts of the world outside of the United States. These manufacturers wished to sell their scooters in the United States but were prevented from doing so by the requirement that motorcycles be equipped with a right foot control for the rear brake.

NHTSA then focused its discussion on the first manufacturer, Aprilia S.p.A. of Noale, Italy, to petition for a temporary exemption from S5.2.1 (Table 1) of FMVSS No. 123. For the rear brakes, Aprilia's Leonardo 150 motorcycle had a left handlebar control, not the right foot control specified in FMVSS No. 123. Aprilia petitioned to be permitted to use the left handlebar as the location for the rear brake control for the Leonardo 150. The Leonardo's 150 cc engine produces more than the five horsepower maximum permitted for motor-driven cycles, so it was not permitted to have its rear brake controlled by a lever on the left handlebar.

When NHTSA received Aprilia's petition, there was little current information available on motorcycle crashes with adequate detail to identify relevant issues such as to what extent riders' unfamiliarity with motorcycle controls results in crashes. As part of our consideration of the petition, we reviewed the available studies, and concluded that they did not show a connection between rear brake control location and crashes. Before we granted Aprilia's petition for temporary exemption for the Leonardo 150, we asked Aprilia to comment on our concern that differing rear brake control locations may contribute to unfamiliarity with a motorcycle's controls and thus degrade a rider's overall braking reaction beyond what would exist on a motorcycle with a conventionally configured (right foot operable) control.

Aprilia responded by hiring Carter Engineering of Franklin, Tennessee, to conduct a study comparing braking reaction times of riders on an Aprilia scooter without a foot brake and a conventional scooter with a foot brake. The report on that effort, ''Motor Scooter Braking Control Study'' (Report No. CE–99-APR–05, May 1999), may be reviewed at *http://dms.dot.gov*, Docket No. NHTSA–98–4357.

The Carter Engineering report appeared to show that American riders do not seem to hesitate in using a left handlebar-mounted rear brake control and that riders may actually gain some benefit in their braking response time. Based in part on the Carter Engineering study, we granted the Aprilia petition, interpreting the Carter Engineering report as an indication that the Leonardo 150 rider's braking response was not likely to be degraded by the different placement of the brake controls.

III. Notice of Proposed Rulemaking (NPRM)—The Regulatory Alternatives for Rear Brake Control Location

With the motorcycle crash causation studies and Carter Engineering tests as background, in a notice of proposed rulemaking (NPRM) published on November 21, 2003 (68 FR 65667) [DOT Docket No. NHTSA–03–15075], we proposed two regulatory alternatives for the rear brake control location. We stated that after considering the comments on this proposal, we contemplated adopting one of the alternatives in the final rule. For a full description of each of the proposed alternatives, please see the NPRM at 68 FR pages 65,669 through 65,670.

A. Alternative I

As the first alternative, we proposed that FMVSS No. 123 would specify two brake control configurations. The factor determining which of the two configurations the motorcycle manufacturer must use would be dependent on whether the motorcycle is equipped with a clutch lever. Motorcycles with a clutch lever would be required to have the rear brake control on the right side operated by the rider's right foot. Motorcycles without a clutch lever would be required to have the rear brake control on the left handlebar and would have the option of a supplemental control on the right side operated by the rider's right foot. For the front brake control, FMVSS No. 123 would continue to require a lever on the right handlebar in all cases.

B. Alternative II

For the second alternative, we proposed a regulatory approach for the U.S. similar to that specified in European countries and in Japan. We proposed that FMVSS No. 123 would require that scooters without manual clutch levers have their rear brake control located on the left handlebar. This alternative would define ''scooter'' as a subset of motorcycles. We proposed to use the ''platform'' on a motorcycle as the characteristic distinguishing ''scooters'' from ''motorcycles.'' As further explained below, the ECE regulation allows the left handlebar location that we proposed to require under this alternative. Specifying the left handlebar location for the rear brake control would result in greater international harmonization.

We also discussed how scooters can be distinguished from other motorcycles. First, we noted that scooters have a step-through frame architecture that leaves the space directly in front of the rider's seat largely open to allow the rider to mount the seat without having to swing a leg over it. In contrast, other motorcycles almost always have their gas tanks and engines located in the space forward of the seat and have rigid frame members located there.

Second, scooters are characterized by having platforms or floorboards for the rider's feet built into the body structure. The platforms are in contrast to the foot pegs used on other motorcycles. Some other motorcycles may be equipped with individual platforms or floorboards for each of the rider's feet, but the individual platforms usually are not part of the body structure of the motorcycle as are the platforms on a scooter.

We also noted that although they are usually smaller than full-sized motorcycles, scooters often have engines generating more than five horsepower. Because their engines may exceed five horsepower, scooters may not qualify as ''motor-driven cycles'' as defined in 49 CFR part 571.3.

We also described how the approach taken in the second regulatory alternative would achieve a measure of international harmonization with existing global regulations that has previously been lacking. We noted that most of the scooter models which have been granted exemptions from FMVSS No. 123's rear brake control placement requirements are identical to scooter models sold in Europe and Japan.

C. Supplemental Rear Brake Controls also addressed supplemental rear brake controls in the NPRM, noting that under the second alternative, the current requirement in S5.2.1 (''If a motorcycle with an automatic clutch is equipped with a supplemental rear brake control, the control shall be located on the left handlebar.'') would still be relevant because most motorcycles would continue to have a right foot pedal to control their rear brakes, and a supplemental rear brake control would be located on the left handlebar if no clutch lever was present. However, under the second alternative, it would be necessary to specify that, if a clutch-less scooter has a supplemental rear brake control, it must be a right foot pedal.

D. Motorcycles With Integrated Braking

1. The Honda Petition for Temporary Exemption

We also addressed an issue resulting from a request for temporary exemption from FMVSS No. 123's right foot rear brake control requirements from American Honda Motor Company, Inc. for its NSS250 scooter, also called the ''Reflex.'' The NSS250 scooter is equipped with an integrated braking system that replaces the dedicated rear brake control with a control connected to the rear brake caliper but also to one piston of the multi-piston front caliper, thus providing partial front brake application along with rear brake application. In accordance with FMVSS No. 123, a separate front brake control on the right handlebar activates the remaining front caliper pistons.

At present, FMVSS No. 123 at S5.2.1 specifies that, if provided, an integrated brake control must be located and operable in the same manner as a rear brake control. This provision addresses motorcycles which have only a single control for all braking functions, *i.e.,* those without separate front and rear brake controls. It also addresses systems with two separate controls in which one of the two is a control that applies braking force to both brakes, as in the case of the NSS250.

Under both proposed regulatory alternatives, on any motorcycle with a manual clutch, the control for an integrated brake system would be required to be on the right foot pedal since that would be the required location of the rear brake control. For motorcycles without clutches, the first alternative would require that a control for an integrated brake system be located on the left handlebar. Under the second alternative, for scooters without clutches a control for an integrated brake system would be required to be on the left handlebar. For all other motorcycles without clutches, the second alternative would require the integrated brake system control to be on the right foot pedal.

On the Honda NSS250, for example, the integrated brake system control is in effect the rear brake control since the integrated system acts primarily on the rear brake caliper and is the only rear brake control provided. The NSS250 and other motorcycles with integrated braking systems are designed such that the motorcycles would be able to comply with either regulatory alternative.

2. Supplemental Controls on Integrated Braking Systems

Since a motorcycle could be equipped with integrated braking as well as a supplemental brake control, it is necessary to specify that the supplemental control provide the same integrated braking effect that is provided by the primary rear brake control.

In cases where the primary control is an integrated control, we proposed to add the following statement to S5.2.1: ''The supplemental brake control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard.''

Because an integrated control may be located either on the left handlebar or on the right foot pedal depending on whether a motorcycle is clutchless (first alternative) or is a clutchless scooter (second alternative), we believe that it is important to make the regulatory text clear on this issue. In order to clarify that an integrated brake control must be located as if it were a rear brake control, we proposed to modify the last statement in S5.2.1 under both regulatory alternatives as follows: ''If a motorcycle is equipped with self-proportioning or antilock braking devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, *as specified in Table 1, Item 11, and in this paragraph.*'' (Italicized language is new language that would be added to the texts of both regulatory alternatives.)

3. Request for Comments on New Developments in Motorcycle Integrated Braking Systems

Since the new type of braking system on the NSS250 has generated a high level of interest from members of the public, the agency sought information about alternative configurations for motorcycle brake controls and other anticipated developments that might influence future brake system safety requirements. We requested responses to six questions and asked for test data, crash data, simulation data, or other information that would support any suggested actions in this area.

IV. Comments on the NPRM and NHTSA's Response

NHTSA received comments on the NPRM from the following seven parties: American Honda Motor Company, Inc. (Honda); American Suzuki Motor Corporation (Suzuki); Harley-Davidson Motor Company (Harley-Davidson), International Motorcycle Manufacturers Association (IMMA), Peugeot Motorcycles of PSA Peugeot Citroen (Peugeot); Piaggio USA, Inc., (Piaggio), and Yamaha Motor Corporation USA (Yamaha). The comments can generally be categorized as focusing on two major issues: (1) Whether manufacturers should have discretion in locating brake controls and (2) the definition of ''scooter.'' The issues raised in the public comments, and NHTSA's response to the comments, are discussed below. We have also addressed several additional comments, primarily on supplemental rear brake controls and on motorcycles with integrated braking.

A. Comments on Alternative I

1. Public Comments

Regarding manufacturer choice in brake control location, the commenters noted that both versions proposed in the NPRM (*i.e.,* Alternatives I and II), would mandate a particular control arrangement. The commenters all stated that manufacturers should be given some discretion in the arrangement of brake controls. The commenters differed on the extent to which discretion should be provided. For example, Suzuki stated that its main concern:

> [I]s that both alternatives would mandate, rather than permit, the left handlebar rear brake control location for certain motorcycles. Suzuki sees no safety benefit in prohibiting any motorcycle from using the rear brake control location currently required by FMVSS No. 123 * * * Suzuki recommends that NHTSA adopt a regulatory requirement that is based on the first proposed alternative, but which permits, rather than mandates, the left handlebar location for the rear brake control on motorcycles without a clutch lever.

Harley-Davidson stated that Alternative I is unacceptable. That company does not presently sell motorcycles with a transmission without a clutch lever. The rear brake on Harley-Davidson motorcycles has been operated by the right foot pedal on all its vehicles since the early 1970's. Harley-Davidson stated that the NPRM provided no ''compelling reasons'' why

the rear brake control location should change on the full-sized motorcycle offered by Harley-Davidson merely if a clutchless transmission motorcycle were to be offered for sale. Harley-Davidson further stated that the option that a rear brake control on clutchless transmission motorcycles could be supplemented by a second control for the right foot would prove ''troublesome,'' adding manufacturing complexity and creating differences that are not readily discernible between vehicles with and without a clutch lever. If Harley-Davidson should market a clutchless transmission motorcycle, Alternative I would require it to use an arrangement of brake controls unlike that on all other motorcycles it presently sells, and would be unfamiliar to its customers.

IMMA stated that since 1984, manufacturers have been able to choose between either a left-hand or right-foot location for the rear brake control on scooters sold outside the U.S. IMMA stated that since it is not aware of any study showing a safety problem from manufacturers having a choice in the rear brake control location, manufacturers should continue to be free ''to select whichever control layout best suits their vehicle concept.''

Piaggio noted that the ECE regulation permits either the left hand or the right foot placement for the rear brake control. Piaggio stated:

> [M]any examples can be found of vehicles adopting both of the aforementioned configurations. To our knowledge, we are not aware of any study, which has shown that this particular policy has caused operator confusion or compromised safety in any way. On the other hand our experience has shown that whenever a rider is presented with a new scooter, he/she rapidly adapts him/herself to the riding characteristics and input requirements of the new bike. It is therefore our opinion that the manufacturer should be allowed to adopt the layout which best satisfies the technical requirements for the vehicle.

Yamaha did not specify whether it favored Alternatives I or II, but recommended three possible arrangements for motorcycle brake controls which were the most common ones.[2] Yamaha stated that a manufacturer should be able to select any of the three at its discretion for any clutchless motorcycle. Peugeot went further, listing virtually every possible permutation of brake control arrangement, and indicating which arrangements it believes should be deemed acceptable, and which should be prohibited.

Honda stated that Alternative I, which would create distinctions between motorcycles with and without clutch controls, would:

> [C]reate a condition where a single motorcycle * * * offered with both manual and automatic transmission would have different locations for the rear brake controls. Being similar in every other way, this difference in rear brake control location could lead to rider confusion if an individual were to ride both versions of this model.

Honda concluded that based on the background of FMVSS No. 123 (to minimize confusion among motorcycle riders, caused by varying locations of brake and clutch controls from one manufacturer to another), mandating exceptions to the layout (depending on whether there is a clutch), will result in more variations from this arrangement, which ''could lead to a greater number of crashes caused by critical confusion of riders.''

2. NHTSA's Response to the Comments

In responding to comments on the issue of manufacturer discretion in determining rear brake control location, we begin by noting that no commenter presented any kind of crash data, research studies, or other quantitative information to support their arguments. Although there may not be any studies showing a safety problem in European or Asian countries where manufacturers are allowed to choose either brake control arrangement, and where similar motorcycles with different controls may co-exist, the absence of research is not the same as positive evidence of the lack of a safety effect. Therefore, the public comments have not persuaded us to permit manufacturer choice in rear brake control location.

We further note that not all commenters agreed on how much choice should be provided. For example, Harley-Davidson did not support differing rear brake control location requirements, depending on whether the motorcycle had a clutch. Honda did not recommend a choice of brake control location for non-scooter motorcycles, stating that non-scooter motorcycles should not be allowed to have a rear brake control on the left handlebar.

Some commenters, in particular Honda and Harley-Davidson, objected to the possibility of non-scooter motorcycles that they manufacture being equipped with left hand controls for their rear brakes under any circumstances, *i.e.,* they did not voice support for Alternative I. We agree that such an arrangement would be markedly different from existing motorcycles and would be counter to the objective of standardization. While there is only one manufacturer (Ridley Motorcycle Company of Oklahoma City) currently marketing non-scooter motorcycles with automatic transmissions in the U.S., additional motorcycles of that kind might become available in the near future.

FMVSS No. 123 was established to standardize motorcycle controls and displays, reducing the possibility of unfamiliarity with controls from contributing to motorcycle crashes. When NHTSA adopted FMVSS No. 123 in the early 1970's, the layout of controls specified in FMVSS No. 123 was that used by the overwhelming majority of motorcycles sold in the U.S. at that time. The layout included a lever on the right handlebar for the front brake, and a foot control on the right side for the rear brake.

Currently, our main objective in amending FMVSS No. 123 is to address the industry trend towards rear brake control placement on the left handlebar on certain motorcycles, resulting in many requests for temporary exemption, so that those motorcycles can comply with the rear brake control location requirements without redesign. At the same time, NHTSA believes there must be continued attention on maintaining standardization, which is the foundation of FMVSS No. 123. For these reasons, NHTSA is reluctant to consider amendments that reduce standardization of the controls and displays of similar motorcycles.

Therefore, we decline to implement the left hand rear brake control location as an optional location to the existing right foot location. Permitting manufacturers to choose between two different arrangements could result in similar or even identical clutchless motorcycles having different rear brake controls. While some commenters asserted that such an outcome would not have any safety consequences, without probative data, we continue to believe that the goal of standardization is better served if FMVSS No. 123 specifically requires one brake control arrangement over another. Thus, this final rule makes the left hand rear brake control a requirement, not an option, on certain motorcycles.

In summary, we have decided to amend FMVSS No. 123 so that scooter-type motorcycles with automatic transmissions (*i.e.,* scooters without a clutch) are required to have a left hand rear brake control. Non-scooter motorcycles are not subject to any new or different requirements. In the next

[2] (1) Left hand for rear and right hand for front operation of brake control levers; (2) right hand front brake operated brake lever and right foot rear brake pedal; and (3) left hand rear and right hand front operated brake control levers with supplemental right foot-operated rear brake pedal.

section, ''Definition of a Scooter,'' we discuss our decision to adopt the regulatory text of Alternative II (in the NPRM), so that the left hand rear brake control is required only on ''scooters'' as defined in the regulatory text, and not on clutchless non-scooter motorcycles.

B. Comments on Alternative II

1. Public Comments

The second major issue in this rulemaking is the proposed definition in Alternative II for ''scooter.'' As discussed in the NPRM, NHTSA derived the definition of ''scooter'' from the regulatory text of United Nations ECE Regulation No. 60, Addendum 59. Honda favored Alternative II, but several commenters stated that NHTSA's proposed definition was ambiguous and would lead to difficulty in interpreting the Standard.

Harley-Davidson stated that the proposed definition is ''troublesome'' and needs to make clear that non-scooter motorcycles are not included. Harley-Davidson stated that if NHTSA is to define ''scooter,'' it needs to use terms that are ''unambiguous and clear.''

Suzuki stated that the ''scooter'' definition ''could quickly become outdated as motorcycle designs continue to evolve.''

IMMA described the deliberations that went on during the development of ECE Regulation No. 60, recounting that a debate had occurred among the attendant parties over whether a ''scooter'' category should be defined. IMMA stated that the argument in favor of defining ''scooter'' was that typical scooters were a type of motorcycle which had particular features to make them appropriate for new riders uninterested in non-scooter motorcycles.

IMMA stated that the arguments against defining ''scooter'' were: It would cut across existing categories, *i.e.,* moped and motorcycle, in ECE regulations; a practical definition is difficult to develop; and such an approach is design-based rather than performance-based. IMMA further stated:

> The outcome of these discussions was a compromise which was designed to unblock the discussion and yet increase the freedom for the manufacturer to provide new vehicles, which were designed to attract a new class of customer. Hence, the Regulation [ECE Regulation] refers to both the absence of a clutch and to footrests integrated into a platform.

Piaggio urged the agency to abandon its attempt to categorize ''scooters'' and instead to adopt a definition that used functional characteristics, such as whether the motorcycle has pedals for propulsion or a manual versus automatic transmission.

Honda recommended adopting Alternative II, but with appropriate revision to allow, but not require, a left handle bar-mounted rear brake control instead of the right foot control. Honda stated that this would ''permit more freedom of design in the event future developments lead to designs that advance safety beyond current levels.'' However, Honda also stated its concern that ''the line between scooter and motorcycle will continue to blur'' as new scooters acquire more of the features associated with non-scooter motorcycles. Honda stated that a ''scooter'' definition must therefore be clear in prohibiting a non-scooter motorcycle from having a left hand rear brake control. Honda stated that such a design would be contrary to convention and would introduce the potential for ''critical confusion'' of controls. Honda stated: ''We discourage allowing this design at all for fear of the potential safety hazards, and have no current plans of selling a motorcycle with such a configuration.''

Some commenters stated that a separate definition of ''scooter'' would not serve the interests of global harmonization of motor vehicle safety standards. IMMA and Piaggio both indicated that a U.S. regulation with a ''scooter'' category would complicate harmonization efforts under the 1998 Global Agreement at Geneva which has the intended purpose of influencing signatory nations to make their corresponding standards as alike as possible when amending them. Honda on the other hand, stated that Alternative II would more closely align FMVSS No. 123 with impending changes to ECE Regulation No. 60, that are ''due this calendar year.'' Honda requested FMVSS No. 123 to allow the same latitude in design for scooters as ECE 60 allows.

2. NHTSA's Response to the Comments

In responding to the comments on the definition of ''scooter,'' we begin by noting that there is no regulatory or statutory definition in U.S. motor vehicle safety laws or regulations, nor any voluntary industry standard, to distinguish scooters from other motorcycles. In our attempt to define ''scooter,'' we have reviewed the most relevant current regulation, United Nations ECE Regulation No. 60, Addendum 59, which is the basis for national regulations concerning motorcycle controls in many European countries and Japan. The following sections discuss issues considered by NHTSA in its consideration of a ''scooter'' definition.

a. ECE Regulation No. 60 Definitions That We Reviewed

ECE Regulation No. 60 does not define ''scooter'' but refers in paragraph 6.2.2.2 to ''vehicles equipped with a *platform* or *footrests integrated into a platform* * * * [Emphasis added.]'' ECE Regulation No. 60 allows a vehicle of that description, *i.e.,* a scooter, to have its rear brakes controlled by a lever on the left handlebar if it has an automatic transmission. This arrangement is allowed unless the scooter is also a moped, in which case it is required. If the motorcycle has a manual transmission, it must have a foot pedal on the right side for the rear brake.

ECE Regulation No. 60 defines ''platform'' (one of the attributes of a ''scooter'' proposed in NHTSA's NPRM) as: ''that part of the vehicle on which the driver places his feet, when seated in the normal driving position, in the case that the vehicle is not equipped with riding pedals or footrests for the driver.'' The term ''riding pedals'' refers to the pedals on mopeds used for human-powered propulsion.

''Footrests'' are defined in the ECE standard as ''the projections on either side of the vehicle on which the driver places his feet when seated in the driving position.'' Footrests are usually in the form of foot pegs, although many motorcycles use small platforms which are mounted like foot pegs but are elongated to support the entire foot.

b. Maximum Speed Characteristic

We noted in the NPRM that ECE Regulation No. 60 limits the use of a left handlebar lever for the rear brake to motorcycles which, in addition to having a platform, ''have a maximum design speed not exceeding 100 km/h.'' Modern, clutch-less scooters almost universally have their rear brake control located on the left handlebar even if they can exceed 100 km/h because directives of the individual nations where most scooters are sold do not adhere to the 100 km/h maximum speed limit of the ECE regulation. We also noted that most of the scooter/motorcycles (intended to be sold in the U.S) granted exemptions from FMVSS No. 123 brake control placement are capable of exceeding 100 km/h (62 mph). Ultimately, this inconsistency means that a speed-based definition was not likely to be practical.

c. Other Design Characteristics

In the past, scooters could be distinguished from non-scooter motorcycles by a number of design

characteristics. For example, scooters were generally smaller in overall size and engine displacement, were lighter, and had smaller wheels. For scooter-type motorcycles today, many of those distinctions are no longer universal. The largest scooters are now as big and heavy as non-scooter motorcycles, with equal or greater engine displacement and wheel size. In addition, scooters often have engines in excess of five horsepower, and so do not qualify as motor-driven cycles by the definition in 49 CFR 571.3. Scooters with engines in excess of five horsepower is the reason why many modern scooters have had to be exempted from FMVSS No. 123 requirements, and why this rulemaking is necessary.

d. Need for an Enhanced Scooter Definition

The regulatory text of Alternative II in the NPRM, which is the basis for the final rule, was derived in large part from ECE Regulation No. 60, but focuses on the ''platform'' characteristic instead of the maximum speed characteristic. Scooters are generally characterized by having a continuous platform or floorboard, or right and left floorboards, built into their body structures, or some other built-in accommodation for the operator's feet. This contrasts with the foot pegs used on non-scooter motorcycles.

As earlier indicated, several commenters, expressing dissatisfaction with the NPRM definition, indicated a potential for misunderstanding about how some motorcycles should be classified, due to crossover models between the scooters and non-scooter motorcycles. NHTSA has recognized that many non-scooter motorcycles are now equipped with individual platform-style footrests for each of the rider's feet. Although such footrests are not usually part of the body structure of the motorcycle (as they typically are on a scooter), we recognized the potential for confusion.

e. New Step-Through Architecture Criterion for Defining Scooters

Because it is critical that ''scooter'' be defined as accurately as possible, we have decided it is appropriate to add an additional criterion in this final rule to distinguish between scooters and non-scooter motorcycles. As discussed in the NPRM, we note that scooters can be differentiated from other motorcycles by the step-through frame architecture that leaves the space directly in front of the operator's seat largely open, allowing the rider to mount the seat by stepping through the scooter, rather than having to swing a leg over it. The scooter configuration also provides the operator with room to adjust his or her leg position for comfort. In contrast, for non-scooter motorcycles, the engine and fuel tank occupy the space forward of the seat, and there are usually rigid frame members located in the space forward of the seat.[3]

Although traditional scooter construction adheres closely to this step-through architecture, some modern scooters have become more like non-scooter motorcycles. Still, on all scooters of which NHTSA is aware, the section of the vehicle forward of the seat that is between the operator's legs is always lower than the seat itself. In contrast, the corresponding part of a non-scooter motorcycle is higher than the seat in all models that we have observed. We believe this difference provides another obvious way to distinguish between scooters and other motorcycle types.

Therefore, in response to NPRM comments, we have added regulatory language referring to the step-through architecture characteristic to enhance the proposed S4 ''scooter'' definition. The final rule's definition now reads as follows (the italicized text has been added to the definition that was proposed in the NPRM):

''Scooter'' means a motorcycle that (1) has a platform for the operator's feet or has integrated footrests, *and (2) has a step-through architecture meaning that the part of the vehicle forward of the operator's seat and between the legs of an operator seated in the riding position is lower in height than the operator's seat.*

NHTSA notes that under this expanded definition, a motorcycle must have both platforms and the step-through characteristics in order to be considered a ''scooter.'' Thus, this definition will allow for easier differentiation between scooters and other types of motorcycles. NHTSA believes the definition presented in this final rule ensures that all existing scooter designs can be adequately differentiated.

C. Other Issues

1. Single-Point (Combined) Braking

In response to the NPRM, Honda reiterated ''our strongly held belief that a single-point control for a combined braking system must be located in one or the other of the current locations—either on the right handlebar or for operation by the right foot.'' Harley-Davidson stated that it does not offer motorcycles with single-point braking for sale, and had no opinion on where the single brake control on such motorcycles should be located. However, it urged caution, noting that FMVSS No. 123 at present ''contemplates offering'' a single brake control, operated by the right foot. Harley-Davidson stated it was not aware of any motorcycles using a single-point brake control.[4] Harley-Davidson also noted that although one may use the left foot on a car's brakes if necessary, that would not be possible on a motorcycle.

After considering the comments, in this final rule, we have decided not to amend the S5.2.1 requirement for motorcycles with combined brake systems and for manual transmission scooters with combined brake systems. Both types of motorcycles with combined brake systems will continue to have their single-point control located at the right foot.

For clutchless scooters, however, this final rule requires that a single-point control for a combined brake system be located on the left handlebar. In its comments, Honda asserted that a single-point control should be located on the right side. However, NHTSA believes that a single-point control on the left handlebar is acceptable for the following reason. On a clutchless scooter with combined braking, the operator would be freed from the task of shifting gears and of controlling front and rear brakes separately. Therefore, the driving task would be reduced to throttling with the right hand and braking with the left. It is NHTSA's belief that such inherently uncomplicated operation would safeguard the operator from confusion over controls.

In order to further clarify that a single-point brake control must be located as if it were a rear brake control, NHTSA has modified the last statement in S5.2.1 as follows (new text italicized):

If a motorcycle is equipped with self-proportioning or antilock braking devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, *as specified in Table 1, Item 11, and in this paragraph.*

2. Supplemental Rear Brake Controls

In response to the NPRM, Honda stated its view that the right foot activated rear brake control is primary, and the left hand control for the rear

[3] We acknowledge that some motorcycles, and in particular, one popular model of touring bike, have a storage compartment in place of the fuel tank, the latter being located under the seat; nevertheless, in overall appearance and layout, they are essentially like non-scooter motorcycles.

[4] Except for some three-wheeled models with enclosed cabins similar in function to an automobile.

brake is supplemental. Honda stated that its preferred control location is more in keeping with FMVSS No. 123 in its current form, and ''is more supportive of the consistent location of brake controls.'' No other commenter provided views on this issue.

After considering Honda's comment (which essentially recommended maintaining the status quo), with regard to supplemental rear brake controls, under this final rule, we have decided that all non-scooter motorcycles will continue to have right foot pedal control of their rear brakes, and a supplemental rear brake control would be located on the left handlebar if no clutch lever were present, as the standard currently requires.

However, it is necessary to specify that, on a clutch-less scooter with a supplemental rear brake control, that control must be located at the right foot pedal. This change is reflected in S5.2.1 of the regulatory language of the final rule.

To ensure that a supplemental brake control provides the same braking function as a primary rear brake control in cases where the primary control is a single-point control, NHTSA has added the following statement to the regulatory text: ''The supplemental brake control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard.''

3. Minor Revision to Table 1

In three places in Column 2 of Table 1 of FMVSS No. 123, the abbreviation ''do.'', a shortening of ''ditto,'' is used to indicate that the previous entry in the column is repeated. The text that is replaced by the abbreviation is ''Left handlebar'' in the first instance where the abbreviation appears, and ''Right handlebar'' in the two subsequent instances. This abbreviation is potentially confusing, and it is also unnecessary since the replaced text can be expressed in full without difficulty. Therefore, in this final rule, in Table 1, the ''do.'' abbreviation is replaced with the full text, ''Left handlebar'' or ''Right handlebar'' as appropriate. The revised regulatory text in Table 1 is that of Column 2, Items 4, 9, and 10.

4. Minor Revisions to Table 3

Motorcycle manufacturers or importers have asked NHTSA whether motorcycle speedometers in the U.S. must indicate speed in miles per hour, or if kilometers per hour suffices. ''Motorcycle Control and Display Identification Requirements'' are listed in Table 3 of FMVSS No. 123 and include speedometer labeling specifications. A potential source of confusion about speedometer labeling appears to be that Item 8 in Table 3 lists ''M.P.H.'' and ''km/h'' to denote the required display units. For comparison, FMVSS No. 101, which in Table 2 has corresponding requirements for passenger vehicles, lists ''MPH'' and ''MPH and km/h'' to denote the required display units. As with FMVSS No. 101 for passenger vehicles, FMVSS No. 123 is meant to require motorcycle speedometers in the United States to read in either miles per hour alone or in miles per hour with kilometers per hour. The rulemaking history of FMVSS No. 123 makes clear that NHTSA never intended to allow a motorcycle speedometer to read only in kilometers per hour.

In order to minimize any confusion about motorcycle speedometer labeling, we are making the following minor revision to Table 3 of FMVSS No. 123. In Columns 2 and 4, the display specifications for ''Speedometer'' (Item No. 8) are modified as follows (changes indicated in bold text):

MOTORCYCLE CONTROL AND DISPLAY IDENTIFICATION REQUIREMENTS

No.	Column 1 Equipment	Column 2 Control and Display Identification Word	Column 3 Control and Display Identification Symbol	Column 4 Identification at Appropriate Position of Control and Display
*	*	* *	* *	*
8	Speedometer	**MPH or** MPH, km/h	_____	**MPH** [4] **MPH, km/h** [5]

In addition, in No. 5, ''Headlamp Upper-Lower Beam Control,'' Column 4 is corrected to read ''Hi, Lo''. All other items in Table 3 and associated footnotes remain unchanged.

V. Final Rule

As discussed in the previous sections, in this final rule, we adopt Alternative II proposed in the NPRM, and define a ''scooter'' category that is different from other motorcycles. In addition to the feature of platforms proposed in the NPRM, in this final rule, we add the feature of the step-through architecture, so the scooter definition consists of two parts, a motorcycle that has (1) a platform for the operator's feet or has integrated footrests, and (2) has a step-through architecture, meaning that the part of the vehicle forward of the operator's seat and between the legs of an operator seated in the riding position is lower in height than the operator's seat. Scooters with automatic transmissions (*i.e.*, motorcycles without a clutch) are required to have a left hand rear brake control.

In this final rule, FMVSS No. 123 continues to require non-scooter motorcycles with combined brake systems, and to require manual transmission scooters with combined brake systems, to have their single-point control be located at the right foot, the required location for the rear brake control. For clutchless scooters, however, this final fule requires that a single-point control for a combined brake system be located on the left handlebar.

With regard to supplemental rear brake controls, under this final rule, all non-scooter motorcycles will continue to have right foot pedal control of their rear brakes, and a supplemental rear brake control would be located on the left handlebar if no clutch lever were present, as the standard currently requires. On a clutchless scooter with a supplemental rear brake control, that control must be located at the right foot pedal.

Finally, we have made minor changes to Tables 1 and 3.

VI. Leadtime

In the NPRM, we proposed to make the amendments effective 12 months after the final rule is published, but to allow optional early compliance 30 days after the final rule is published. We stated our belief that because this proposal would permit controls for rear motorcycle brakes to be placed on left motorcycle handlebars, a regulatory restriction would be lifted, and motorcycles that do not presently meet FMVSS No. 123 would be permitted. All

other existing motorcycles would also meet the provisions of the proposed rule.

Except for Honda's recommending ''early compliance'' with the final rule, urging us to make the final rule effective as soon as possible, we received no comments on the leadtime issue. Thus, as NHTSA proposed in the NPRM, this final rule takes effect one year after the date of publication in the **Federal Register**. Optional compliance is available as of the date of publication of this final rule in the **Federal Register**.

VII. Statutory Basis for the Final Rule

We have issued this final rule pursuant to our statutory authority. Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and deaths and injuries resulting from traffic accidents. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. Section 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule to amend FMVSS No. 123. As previously discussed in detail, we have solicited public comment in an NPRM and have carefully considered the public comments before issuing this final rule. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information. Consideration of all these statutory factors has resulted in the following decisions in this final rule.

At present, FMVSS No. 123 requires the control for a motorcycle's rear brakes to be located on the right side of the motorcycle and be operable by the rider's right foot. FMVSS No. 123 requires the control for a motorcycle's front brakes to be located on the right handlebar. For rear brakes on a ''motor-driven cycle [5],'' FMVSS permits the control on the left handlebar. If a motorcycle has an automatic clutch (eliminating the need for a clutch lever) and a supplemental rear brake control (in addition to the right foot control), the supplemental control must be located on the left handlebar. Finally, if a motorcycle is equipped with a single control for both the front and rear brakes, that control must be located and operable in the same manner as a rear brake control.

Since 1999, we have granted several petitions for temporary exemption from the brake control location requirements. These petitions have come from manufacturers of scooters with automatic transmissions (without clutch levers) and handlebar-mounted brake controls, which is a common arrangement outside of the United States. These manufacturers could not sell their scooters in the U.S. because the scooters could not meet the requirement that motorcycles be equipped with a right foot control for the rear brake. We reviewed a study that American riders do not appear to hesitate in using a left handlebar-mounted rear brake control and that riders benefit in their braking response time.

In the NPRM, we proposed to amend FMVSS No. 123 by proposing two regulatory alternatives for the location of the rear brake control. The first alternative would require the rear brake control to be located on the left handlebar for any motorcycle that lacks a clutch, regardless of the motorcycle's configuration. The second alternative would require the left handlebar location only for clutchless motorcycles that are ''scooters,'' a newly defined subset of motorcycles. Under either alternative, all other motorcycles would meet present FMVSS No. 123 rear brake location requirements that the rear brake is operated by a right foot control.

In general, the public comments stated that manufacturers should be given some discretion in the arrangement of brake controls. In response to the comments, we reiterated that FMVSS No. 123 was established to reduce the possibility of unfamiliarity with controls contributing to motorcycle crashes. When NHTSA adopted FMVSS No. 123 in the early 1970's, the layout of controls specified in FMVSS No. 123 was that used by the overwhelming majority of motorcycles sold in the U.S. at that time. The layout included a lever on the right handlebar for the front brake, and a foot control on the right side for the rear brake.

Our current objective is to address the industry trend towards rear brake control placement on the left handlebar on certain motorcycles, resulting in many petitions for temporary exemption, so that those motorcycles can comply with the rear brake control location requirements without redesign. At the same time, we believed there must be continued attention to maintaining standardization, which is the foundation of FMVSS No. 123. Thus, we were reluctant to consider amendments that reduce standardization for similar vehicles.

Therefore, we decided not to implement the left hand rear brake control location as an optional location to the existing right foot location. Permitting manufacturers to choose between two different arrangements could result in similar or even identical clutchless motorcycles having different rear brake controls. While some commenters asserted that such an outcome would not have any safety consequences, without probative data, we continue to believe that the goal of standardization is better served if FMVSS No. 123 specifically requires one brake control arrangement over another. Thus, this final rule makes the left hand rear brake control a requirement, not an option, on certain motorcycles.

In summary, we have decided to amend FMVSS No. 123 so that scooter-type motorcycles with automatic transmissions (*i.e.*, motorcycles without a clutch) are required to have a left hand rear brake control. Non-scooter motorcycles need not meet any new or different requirements.

As indicated, we have thoroughly reviewed the public comments and amended the final rule to reflect the comments, consistent with meeting the need for safety. We believe that this final rule meets the need for safety.

[5] ''A motorcycle with a motor that produces five brake horsepower or less'' (49 CFR section 571.3).

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, we have concluded that this final rule will not have any cost effect on motor vehicle manufacturers. This rule will have no substantive effect on motorcycles that are already manufactured for the U.S. market, and will facilitate the import of motorcycles that do not meet present requirements for the location of motorcycle rear brake controls. This final rule will have a slight economic benefit to manufacturers of the import motorcycles, which will now not have to design and build separate motorcycles for the U.S. market and for Europe and Japan.

Because the economic impacts of this rule are so minimal, no further regulatory evaluation is necessary.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, we may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to motorcycle manufacturers, not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply.

C. Executive Order 13045 (Economically Significant Rules Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children. This final rule makes changes affecting only motorcycle manufacturers. Many States do not permit children under 18 years of age to be licensed to drive motorcycles, or to be passengers on motorcycles.

D. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' we have considered whether this rule will have any retroactive effect. We conclude that it will not have such an effect.

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

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The Agency Administrator considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial

number of small entities. The factual basis for this certification is that this final rule will have no effect on small U.S. motorcycle manufacturers. The small manufacturers already manufacture motorcycles that meet the present motorcycle rear brake control requirements and that meet this final rule's amendments to the rear brake control requirements

F. National Environmental Policy Act

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

G. Paperwork Reduction Act

NHTSA has determined that this final rule will not impose any ''collection of information'' burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action will not impose any filing or recordkeeping requirements on any manufacturer or any other party.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have found no applicable voluntary consensus standards.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make this rulemaking easier to understand?

In the November 21, 2003 NPRM, we asked for public comment on whether the NPRM meets Plain Language principles. We received no comments on the Plain Language issue.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR part 571), are amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

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

■ 2. Section 571.123 of Title 49, Code of Federal Regulations is amended by adding a definition of ''scooter'' in the correct alphabetical order to S4, by revising S5.2.1, by revising table 1, and by revising table 3 to read as follows:

§ 571.123 Motorcyle Controls and Displays.

* * * * *

S4. Definitions.

* * * * *

Scooter means a motorcycle that:

(1) Has a platform for the operator's feet or has integrated footrests, and

(2) Has a step-through architecture, meaning that the part of the vehicle forward of the operator's seat and between the legs of an operator seated in the riding position, is lower in height than the operator's seat.

* * * * *

S5.2.1 *Control location and operation.* If any item of equipment listed in Table 1, Column 1, is provided, the control for such item shall be located as specified in Column 2, and operable as specified in Column 3. Each control located on a right handlebar shall be operable by the operator's right hand throughout its full range without removal of the operator's right hand from the throttle. Each control located on a left handlebar shall be operable by the operator's left hand throughout its full range without removal of the operator's left hand from the handgrip. If a motorcycle with an automatic clutch other than a scooter is equipped with a supplemental rear brake control, the control shall be located on the left handlebar. If a scooter with an automatic clutch is equipped with a supplemental rear brake control, the control shall be on the right side and operable by the operator's right foot. A supplemental control shall provide brake actuation identical to that provided by the required control of Table 1, Item 11, of this Standard. If a motorcycle is equipped with self-proportioning or antilock braking

devices utilizing a single control for front and rear brakes, the control shall be located and operable in the same manner as a rear brake control, as specified in Table 1, Item 11, and in this paragraph.

* * * * *

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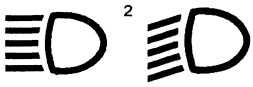
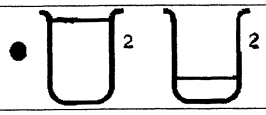
Table 1 - Motorcycle Control Location and Operation Requirements

	Equipment Control - Column 1	Location -- Column 2	Operation -- Column 3
1	Manual clutch or integrated clutch and gear change	Left handlebar	Squeeze to disengage clutch.
2	Foot-operated gear change	Left foot control	An upward motion of the operator's toe shifts transmission toward lower numerical gear ratios (commonly referred to as "higher gears"), and a downward motion toward higher numerical gear ratios (commonly referred to as lower gears"). If three or more gears are provided, it shall not be possible to shift from the highest gear directly to the lowest, or vice versa.
3	Headlamp upper-lower beam control	Left handlebar	Up for upper beam, down for lower beam. If combined with the headlight on-off switch, means shall be provided to prevent inadvertent actuation of the "off" function.
4	Horn	Left handlebar	Push to activate.
5	Turn signal lamps	Handlebars.	

6	Ignition		"Off" - counterclockwise from other positions.
7	Manual fuel shutoff control		Rotate to operate. "On" and "Off" are separated by 90 degrees of rotation. "Off" and "Reserve" (if provided) are separated by 90 degrees of rotation. Sequence order: "On" - "Off" - "Reserve".
8	Twist-grip throttle	Right handlebar	Self-closing to idle in a clockwise direction after release of hand.
9	Supplemental engine stop	Right handlebar	
10	Front wheel brake	Right handlebar	Squeeze to engage.
11	Rear wheel brakes	Right foot control Left handlebar for a motor-driven cycle and for a scooter with an automatic clutch	Depress to engage. Squeeze to engage.
[1]See S5.2.1 for requirements for vehicles with a single control for front and rear brakes, and with a supplemental rear brake control.			

* * * * *

Table 3
Motorcycle Control and Display Identification Requirements

No.	Column 1	Column 2	Column 3	Column 4
	Equipment	*Control and Display Identification Word*	*Control and Display Identification Symbol*	*Identification at Appropriate Position of Control and Display*
1	Ignition	Ignition	_____	Off
2	Supplemental Engine Stop (Off, Run)	Engine Stop		Off, Run
3	Manual Choke or Mixture Enrichment	Choke or Enrichener		_____
4	Electric Starter	_____		Start [1]
5	Headlamp Upper-Lower Beam Control	Lights	 [2]	Hi, Lo
6	Horn	Horn		_____
7	Turn Signal	Turn	[2] [3]	L, R
8	Speedometer	MPH OR MPH and km/h [5]	_____	MPH [4] MPH, km/h [5]
9	Neutral Indicator	Neutral	N	_____
10	Upper Beam Indicator	High Beam	[2]	_____
11	Tachometer	R.P.M. or r/min.	_____	_____
12	Fuel Tank Shutoff Valve (Off, On, Res.)	Fuel	 [2] [2]	Off, On, Res.

[1] Required only if electric starter is separate from ignition switch.
[2] Framed areas may be filled.
[3] The pair of arrows is a single symbol. When the indicators for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
[4] MPH increase in a clockwise direction. Major graduations and numerals appear at 10 mph intervals, minor graduations at 5 mph intervals. (37 F.R. 17474 – August 29, 1972. Effective: 9/1/74)
[5] If the speedometer is graduated in miles per hour (MPH) and in kilometers per hour (km/h), the identifying words or abbreviation shall be "MPH" and "km/h" in any combination of upper or lower case letters.

Issued on: August 23, 2005.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 05–17103 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 082405B]

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; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2005 total allowable catch (TAC) of pollock for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 29, 2005, through 1200 hrs, A.l.t., October 1, 2005.

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.

The C season allowance of the 2005 TAC of pollock in Statistical Area 620 of the GOA is 4,446 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 1,357 mt, the amount by which the A and B season allowance of the pollock TAC in Statistical Area 620 was exceeded. The revised C season allowance of the pollock TAC in Statistical Area 620 is therefore 3,089 mt (4,446 mt minus 1,357 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2005 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,039 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

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 pollock in Statistical Area 620 of the GOA. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of August 22, 2005.

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 § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–17222 Filed 8–25–05; 2:40 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 082405A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2005 total allowable catch (TAC) of pollock for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 27, 2005, through 1200 hrs, A.l.t., October 1, 2005.

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.

The C season allowance of the 2005 TAC of pollock in Statistical Area 630 of the GOA is 6,274 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 2,547 mt, the amount by which the A and B season allowance of the pollock TAC in Statistical Area 630 was exceeded. The revised C season allowance of the pollock TAC in Statistical Area 630 is therefore 3,727 mt (6,274 mt minus 2,547 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2005 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional

Administrator is establishing a directed fishing allowance of 3,677 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

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 pollock in Statistical Area 630 of the GOA. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of August 22, 2005.

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 § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–17221 Filed 8–25–05; 2:40 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 167
Tuesday, August 30, 2005

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

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2005–23]

Definition of Federal Election Activity

AGENCY: Federal Election Commission.

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period for a notice of proposed rulemaking to amend the definition of ''Federal election activity.'' The comment period will be open for thirty days. The NPRM includes proposals that would retain the existing definition of ''voter registration activity'' and modify the existing definitions of ''get-out-the-vote activity'' and ''voter identification'' to conform Commission rules to the ruling of the U.S. District Court for the District of Columbia in *Shays* v. *Federal Election Commission*.

DATES: Comments must be received on or before September 29, 2005.

ADDRESSES: All comments must be in writing, addressed to Ms. Mai T. Dinh, Assistant General Counsel, and submitted in either e-mail, facsimile or paper form. Commenters are strongly encouraged to submit comments by e-mail or facsimile to ensure timely receipt and consideration. E-mail comments must be sent to either *FEAdef2@fec.gov* or submitted through the Federal eRegulations Portal at *www.regulations.gov*. If the e-mail comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law No. 107–155, 116 Stat. 81 (2002), amended FECA by adding a new term, ''Federal election activity'' (''FEA''). The Commission defined FEA in 11 CFR 100.24. In *Shays* v. *FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004), *aff'd*, No. 04–5352, 2005 WL 1653053 (D.C. Cir. July 15, 2005) (''*Shays*''), the District Court held that certain parts of certain regulations had not been promulgated with adequate notice and opportunity for comment and that other aspects of the regulations were inconsistent with Congressional intent. *Shays* at 104, 107 n.83, and 108. The District Court remanded the case for further action consistent with the court's decision.

To address the District Court decision, the Commission published a Notice of Proposed Rulemaking amending the definition of ''Federal election activity.'' Notice of Proposed Rulemaking for the Definition of Federal Election Activity, 70 FR 23068 (May 4, 2005). The NPRM explored possible modifications to the definitions of ''voter registration activity,'' ''get-out-the-vote activity,'' and ''voter identification.'' The comment period for the NPRM ended on June 3, 2005, and a hearing was held on August 4, 2005. Written comments and a transcript of the hearing can be found at: *http://www.fec.gov/law/law_rulemakings.shtml#definition_fea*.

Witnesses at the hearing suggested that the Commission seek additional information that may assist the Commission in its decisionmaking. The Commission is reopening the comment period to allow interested parties to submit information or comments that may be useful in this rulemaking.

Dated: August 24, 2005.

Michael E. Toner,

Vice Chairman, Federal Election Commission.

[FR Doc. 05–17155 Filed 8–29–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 106 and 300

[Notice 2005–22]

State, District, and Local Party Committee Payment of Certain Salaries and Wages

AGENCY: Federal Election Commission.

ACTION: Reopening of comment period.

SUMMARY: This notice reopens the comment period for a notice of proposed rulemaking for proposed changes to regulations regarding payments by State, district or local party committees for salaries and wages of employees who spend 25 percent or less of their compensated time in a month on activities in connection with a Federal election. The proposed changes would require these expenses to be paid using at least some Federal funds, consistent with the rulings of the United States District Court for the District of Columbia and the Court of Appeals for the District of Columbia Circuit in *Shays* v. *Federal Election Commission*.

DATES: Comments must be received on or before September 29, 2005.

ADDRESSES: All comments must be in writing, addressed to Ms. Mai T. Dinh, Assistant General Counsel, and submitted in either e-mail, facsimile or paper form. Commenters are strongly encouraged to submit comments by e-mail or facsimile to ensure timely receipt and consideration. E-mail comments must be sent to either *SPW2@fec.gov* or submitted through the Federal eRegulations Portal at *http://www.regulations.gov*. If the e-mail comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. Anthony T. Buckley, 999 E Street,

NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Pub. L. 107–155, 116 Stat. 81 (March 27, 2002), amended the Federal Election Campaign Act of 1971, as amended (the ''Act''), 2 U.S.C. 431 *et seq.*, by requiring State, district and local party committees (''State party committees'') to pay the salaries and wages of employees who spend more than 25 percent of their compensated time per month on activities in connection with a Federal election entirely with Federal funds.[1] 2 U.S.C. 431(20)(A)(iv) and 441i(b)(1). However, BCRA is silent on what type of funds State party committees must use to pay the salaries and wages of employees who spend some, but not more than 25 percent, of their compensated time per month on activities in connection with a Federal election. The Commission promulgated 11 CFR 106.7(c)(1) and (d)(1)(i), and 300.33(c)(2) to address salaries and wages for both types of employees. Under these rules, State party committees may pay the salaries or wages of employees who spend 25 percent or less of their compensated time each month on these activities entirely with funds that comply with State law. *Id.*

In *Shays* v. *FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004), *aff'd*, No. 04–5352, 2005 WL 1653053 (D.C. Cir. July 15, 2005) (''*Shays*''), the District Court invalidated section 300.33(c)(2) because it is inconsistent with BCRA. *See Shays*, 337 F. Supp. 2d at 114; *see also Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council*, 467 U.S. 837, 842–43 (1984). Although the Court of Appeals affirmed the District Court's invalidation of the rule, its basis differed from the District Court's. The Court of Appeals found the Commission's justification for the rule did not satisfy the requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq. Shays*, No. 04–5352, slip op. at 62, 2005 WL 1653053 (D.C. Cir. July 15, 2005).

Before the Court of Appeals decision was issued, the Commission published a Notice of Proposed Rulemaking addressing State party committee payment of certain wages and salaries. Notice of Proposed Rulemaking on State, District, and Local Party Committee Payment of Certain Salaries and Wages, 70 FR 23072 (May 4, 2005). The NPRM offered several proposals as to the proportion of Federal funds that must be used to pay the salaries and wages of State party committee employees who spends 25 percent or less of their compensated time in a month on activities in connection with a Federal election. The comment period for the NPRM ended on June 3, 2005, and a hearing was held on August 4, 2005. Written comments and a transcript of the hearing can be found at *http://www.fec.gov/law/law_rulemakings.shtml#party_salaries*.

Witnesses at the hearing suggested that the Commission seek additional information that may assist the Commission in its decisionmaking. The Commission is reopening the comment period to allow all interested persons to submit information or comments that may be useful in this rulemaking in light of the Court of Appeals opinion.

Dated: August 24, 2005.

Michael E. Toner,

Vice Chairman, Federal Election Commission.

[FR Doc. 05–17156 Filed 8–29–05; 8:45 am]

BILLING CODE 6715–01–P

[1] ''Federal funds'' are funds that are subject to the contribution limitations, source prohibitions, and reporting requirements of the Act. 11 CFR 300.2(g).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–311–0487; FRL–7962–9]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from fugitive dust sources. We are proposing to approve amendments to local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by September 29, 2005.

ADDRESSES: Send comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment.

You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726

Copies of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, EPA Region IX, (415) 947–4116, irwin.karen@epa.gov.

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

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the individual rules addressed by this proposed rule with the dates that they were adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and submitted to EPA by the California Air Resources Board (CARB). The rules that are the subject of this action are collectively referred to as ''Regulation VIII''.

TABLE 1.—SUBMITTED RULES

Rule No.	Rule title	Adopted	Submitted
8011	General Requirements	08/19/04	09/23/04
8021	Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities.	08/19/04	09/23/04
8031	Bulk Materials	08/19/04	09/23/04
8041	Carryout and Trackout	08/19/04	09/23/04
8051	Open Areas	08/19/04	09/23/04
8061	Paved and Unpaved Roads	08/19/04	09/23/04
8071	Unpaved Vehicle/Equipment Traffic Areas	09/16/04	09/23/04
8081	Agricultural Sources	09/16/04	09/23/04

On March 23, 2005, these rule submittals were found complete by operation of law in accordance with section 110(k)(1) of the Act and 40 CFR part 51, appendix V.

B. Are There Other Versions of These Rules?

We approved versions of Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071 and 8081 into the SIP on February 26, 2003. 68 FR 8830. The SIP-approved versions of these rules were adopted by SJVUAPCD on November 15, 2001 and CARB submitted them to us on December 6, 2001.

C. What Is the Purpose of the Submitted Rule Revisions?

The submitted revisions are necessary to fulfill Regulation VIII commitments in the SIP-approved 2003 PM–10 Plan for the San Joaquin Valley. The TSD has more information about these rule revisions.

II. Background to Today's Proposal

On November 15, 1990, amendments to the CAA were enacted. Pub. Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act, including the San Joaquin Valley Air Basin,[1] were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). Under section 189(a) of the CAA, moderate PM–10 nonattainment areas must implement by December 10, 1993 Reasonably Available Control Measures (RACM) for PM–10.

On February 8, 1993, EPA reclassified five moderate nonattainment areas, including the San Joaquin Valley Air Basin, to serious nonattainment pursuant to section 188(b)(58 FR 3334). Section 189(b) requires serious nonattainment areas to implement Best Available Control Measures (BACM) by February 8, 1997, four years after reclassification.[2]

In response to section 110(a) and Part D of the Act, local California air pollution control districts adopted and the State of California submitted many PM–10 rules to EPA for incorporation into the California SIP on July 23, 1996, including a series of fugitive dust rules (''Regulation VIII'') adopted by SJVUAPCD.

On March 8, 2000, EPA took final action on the 1996 version of Regulation VIII, issuing a limited approval and limited disapproval with an effective date of April 7, 2000. 65 FR 12118. EPA noted that it was ''finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval because of the remaining deficiencies.'' *Id.* at 12119/1.[3] Among the deficiencies identified by EPA were ''lack of appropriate standards and/or test methods that would ensure a level of control consistent with RACM or BACM * * *.'' *Id.*

As a result of the disapproval, EPA explained that the emissions offset sanction would apply 18 months after April 7, 2000, and the highway funding sanction six months later, unless the Air District cured the deficiencies. *Id.* at 12118/2–3. In addition, EPA explained that it would be required to promulgate a Federal Implementation Plan (FIP) if those deficiencies were not corrected within 24 months.

SJVUAPCD adopted revised Regulation VIII rules on November 15, 2001, which CARB submitted to EPA on December 6, 2001. SJVUAPCD intended that the new rules would both remedy the RACM deficiencies identified by EPA in its March 8, 2000 action, and fulfill BACM requirements under the CAA. EPA found that new provisions in Regulation VIII ''significantly strengthened'' the rules by tightening standards, covering more activities, and adding more requirements to control dust-producing activities. 67 FR 15346–47 (4/1/02).

On February 26, 2003, EPA issued a final rulemaking (Final Rule) (68 FR 8830) that conditionally approved the November 15, 2001 version of Regulation VIII with respect to RACM and issued a limited approval and limited disapproval of Regulation VIII with respect to BACM. Thus, the November 15, 2001 version of Regulation VIII was added to the SIP, yet a sanctions clock for the BACM deficiency began with the effective date of the Final Rule, March 28, 2003. *Id.* at 8833/3. We found that the submittal did not adequately fulfill the CAA section 189(b) requirement for a BACM demonstration, specifically identifying thresholds of source coverage within the rules (*e.g.*, minimum size of sources subject to rule requirements) for which an adequate BACM demonstration was outstanding.

On August 19, 2003, CARB submitted the ''2003 PM10 Plan, San Joaquin Valley Plan to Attain Federal Standards for Particulate Matter 10 Microns and Smaller''. CARB submitted Amendments to this plan on December 30, 2003.[4] Among other demonstrations, the Plan included a demonstration that RACM and BACM will be expeditiously implemented for all significant sources of PM–10. The Plan's RACM and BACM demonstration included fugitive dust sources subject to Regulation VIII and contained several specific commitments to upgrade Regulation VIII to a BACM level of control by September 2004. On

[1] The San Joaquin Valley Air Basin is under the jurisdiction of the SJVUAPCD.

[2] Because the statutory RACM and BACM implementation deadlines have passed, RACM and BACM must be implemented ''as soon as possible.'' *Delaney* v. *EPA,* 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be ''as soon as practicable.'' 55 FR 36458, 36505 (September 9, 1990). States are required to develop RACM and BACM that address both the annual and 24-hour PM–10 standards. *Ober* v. *EPA,* 84 F.3d 304, 308–311 (9th Cir. 1996).

[3] The number following the slash (''/'') in this citation refers to the column on the **Federal Register** page.

[4] The Amendments to the 2003 PM–10 Plan supersede some portions of the 2003 PM–10 Plan and also add to it. References hereafter to the ''SJV 2003 PM–10 Plan'' or ''the Plan'' mean the 2003 Plan submitted on August 19, 2003, as amended by the December 30, 2003 submittal.

May 26, 2004, EPA approved the SJV 2003 PM–10 Plan, including the RACM and BACM demonstration for Regulation VIII sources, as meeting the requirements of CAA sections 189(a)(1)(C) and 189(b)(1)(B).[5] 69 FR 30006. Approval of this demonstration terminated all Regulation VIII sanction, FIP, and rule disapproval implications of our February 26, 2003 action. *Id.* at 30035/1.

III. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act) and must not relax existing requirements (*see* sections 110(l) and 193). These rules have been evaluated for enforceability pursuant to the ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

We have also reviewed the submitted rules to determine whether the BACM commitments in the SJV 2003 PM–10 Plan have been adopted into Regulation VIII for purposes of fulfilling the SIP-approved Plan commitments.[6] Since we have already approved the Plan's BACM demonstration for Regulation VIII sources, we are only evaluating these rules under CAA section 189(b) to the extent that requirements adopted in August and September, 2004, differ from the BACM commitments contained in the Plan. EPA's RACM guidance can be found in the General Preamble. EPA's BACM guidance can be found in the Addendum.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. In comparing the relevant rule requirements to the SJV 2003 PM–10 Plan's Regulation VIII BACM commitments, we found only minor differences for which reasoned justification exists. Therefore, we believe that these rules fulfill the Plan's Regulation VIII BACM commitments and that minor modifications SJVUAPCD adopted into Regulation VIII requirements also satisfy BACM. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements as discussed above, we are proposing to fully approve them under CAA section 110(k)(3) as meeting CAA sections 189(a)(1)(C) and (b)(1)(B). We will accept comments from the public on this proposal for the next 30 days. With respect to CAA sections 189(a) and 189(b), we are only evaluating comments to the extent that newly adopted requirements in Regulation VIII differ from the RACM/BACM commitments contained in the PM–10 Plan that EPA has already approved. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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 proposes to approve 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 proposed 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 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 proposed 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.*).

[5] As we explained in our proposed approval of the Plan, CAA section 189(a)(1)(C) requires implementation of RACM for moderate PM–10 nonattainment areas and that a serious area PM–10 plan must also provide for the implementation of RACM to the extent that the RACM requirement has not been satisfied in the area's moderate area plan as was the case here. We further explained that we do not normally conduct a separate evaluation to determine if a serious area plan's measures meet the RACM as well as BACM requirements as interpreted by us in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498, 13540 (April 16, 1992) (General Preamble). This is because in our serious area guidance—Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 59 FR 41998, 42010 (August 16, 1994) (Addendum)—we interpret the BACM requirement as generally subsuming the RACM requirement (i.e., if we determine that the measures are indeed the ''best available,'' we have necessarily concluded that they are ''reasonably available''). 69 FR at 5417/footnote 11. Accordingly, in our evaluation and proposed approval of Regulation VIII below, references to BACM are intended to include RACM.

[6] EPA's determination that the Plan satisfies CAA section 189(b) requirements for BACM was, in part, based upon SJVUAPCD's commitments to adopt specific requirements for fugitive dust sources subject to Regulation VIII.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and Recordkeeping requirements.

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

Dated: August 5, 2005.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 05–17196 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0083; FRL–7962–2]

RIN 2060–AM76

National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: This action proposes amendments to the national emission standards for hazardous air pollutants (NESHAP) for integrated iron and steel manufacturing. The proposed amendments would add a new compliance option, revise emission limitations, reduce the frequency of repeat performance tests for certain emissions units, add corrective action requirements, and clarify certain monitoring, recordkeeping, and reporting requirements.

DATES: *Comments.* Comments must be received on or before October 31, 2005.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by September 19, 2005, a public hearing will be held approximately 30 days following publication of this action in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2002–0083, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0083 and *mulrine.phil@epa.gov.*
- Fax: (202) 566–1741 and (919) 541–5450.
- Mail: U.S. Postal Service, send comments to: EPA Docket Center (6102T), Attention Docket Number OAR–2002–0083, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: In person or by courier, deliver comments to: EPA Docket Center (6102T), Attention Docket ID Number OAR–2002–0083, 1301 Constitution Avenue, NW., Room B–102, 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 a separate copy of each public comment also be sent to the contact person for the proposed action listed below see(**FOR FURTHER INFORMATION CONTACT**).

Instructions: Direct your comments to Docket ID No. OAR–2002–0083. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, Docket ID Number OAR–2002–0083, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Mulrine, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Metals Group (C439–02), Research Triangle Park, NC 27711, telephone (919) 541–5289, fax number (919) 541–5450, e-mail address: *mulrine.phil@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the NESHAP include:

Category	NAIC code[1]	Examples of regulated entities
Industry	331111	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces, basic oxygen process furnace (BOPF) shops.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 63.7781 of subpart FFFFF (NESHAP for Integrated Iron and Steel Manufacturing). If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

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

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at EPA's campus in Research Triangle Park, North Carolina, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Ms. Barbara Miles, Metals Group (C439–02), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5648.

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

I. Background
II. Summary of the Proposed Amendments
III. Rationale for the Proposed Amendments
A. Why are we proposing to revise the emission limitations?
B. Why are we proposing to amend monitoring requirements for baghouses?
C. Why are we proposing to revise the requirements for repeat performance tests?
D. Why are we proposing to revise the definition of ''ladle metallurgy'' to exclude vacuum degassing?
IV. Impacts of the Proposed Amendments
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

I. Background

On May 20, 2003 (68 FR 27646), we issued the NESHAP for integrated iron and steel manufacturing facilities (40 CFR part 63, subpart FFFFF). The NESHAP implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet emission standards for hazardous air pollutants (HAP) reflecting application of the maximum achievable control technology (MACT). The NESHAP establish emission limitations for emission sources in each new or existing sinter plant, blast furnace, and basic oxygen process furnace (BOPF) shop.

After promulgation of the NESHAP, five steel companies and one trade association filed a petition for review challenging the final standards (*AK Steel Corporation et al.* v. *U.S. Environmental Protection Agency,* no. 03–1207, DC Cir.). The petitioners raised issues concerning:

- Failure to respond to substantive industry comments questioning the definitions, subcategorization, control technologies identified, emission standards, testing and monitoring, and other aspects of the rule;
- Failure to provide justification for setting standards for ladle metallurgy operations, sinter plant discharge ends, and sinter coolers;
- Requiring bag leak detection systems to be used for positive pressure baghouse systems that discharge without stacks or from baghouse systems with continuous emission monitors;
- Applying emission standards to control devices that do not discharge to the ambient air;
- Imposing stringent testing, monitoring, inspection, and reporting requirements on insignificant sources;
- Providing for the establishment of source-specific opacity limitations based on opacity observations made during required source performance testing and by specifying use of infeasible technical requirements for such observations; and
- Failing adequately to consider health threshold levels and to allow for alternative emission standards, performance testing requirements or monitoring methods that are demonstrated to provide comparable protection to public health and the environment.

EPA and petitioners anticipate that the amendments to the NESHAP proposed in this notice will resolve these concerns, and EPA and industry petitioners have entered into a settlement agreement whereby EPA agreed to sign a notice proposing these amendments by September 23, 2005. See 70 FR 36383, June 23, 2005 (public notice of settlement agreement pursuant to section 113 of the CAA; EPA received no adverse comment on this notice of settlement).

II. Summary of the Proposed Amendments

The proposed amendments would revise the applicability of the emission limits for sinter cooler stacks at new and existing sinter plants. The revised limits would apply to each sinter cooler instead of to each sinter cooler stack. We are also proposing a 10 percent opacity limit for a sinter cooler at an existing sinter plant instead of the current particulate matter (PM) emission limit of 0.03 grains per dry standard cubic feet (gr/dscf). The proposed amendments would also clarify (in a new footnote to Table 1 of 40 CFR part 63, subpart FFFFF) that PM limits do not apply to discharges inside a building or structure housing a discharge end at an existing sinter plant, inside a casthouse at an existing blast furnace, or inside an existing BOPF shop that is subject to a roof monitor opacity limit. We are proposing to change the frequency for conducting subsequent performance tests from twice each permit term to once each permit term for emission units equipped with a baghouse. Repeat performance tests would still be required at least twice each permit term for a sinter cooler at an existing sinter plant, for each unit equipped with a control device other than a baghouse, and for each affected source without a title V operating permit.

The proposed amendments would revise the operating limit in 40 CFR 63.7790(b)(3) for an electrostatic precipitator (ESP) that controls emissions from a BOPF to require that the hourly average opacity of emissions from the control device be maintained at or below 10 percent.

Section 63.7830(b) of the NESHAP requires a bag leak detection system for each baghouse used to meet a PM limit. The proposed amendments would add an alternative allowing plants to use a continuous opacity monitoring system (COMS) to monitor the opacity of emissions exiting each control device stack. A bag leak detection system or

COMS would not be required for a positive-pressure baghouse not equipped with exhaust gas stacks that was installed before August 30, 2005.

We are proposing to revise the requirements for operation and maintenance (O&M) plans. The proposed amendments would expand the corrective action procedures in 40 CFR 63.7800(b)(4) to apply to baghouses equipped with COMS in addition to those with bag leak detection systems. Plants would be required to initiate corrective action if a bag leak detection system alarm is triggered or if emissions from a baghouse equipped with a COMS exceed an hourly average opacity of 5 percent.

We are also proposing to add corrective action procedures for other types of control devices. If a venturi scrubber equipped with continuous parameter monitoring systems (CPMS) or an ESP equipped with a COMS exceeds the opacity operating limit, plants would be required to take corrective action consistent with their site-specific monitoring plan. New provisions in 40 CFR 63.7833 would require plants to initiate corrective action to determine the cause of the exceedance within 1 hour and to measure operating parameter value(s) for the emission unit within 24 hours of the exceedance. If the measured value(s) meet the applicable operating limit, the corrective action is successful and the emission unit would be in compliance with the applicable operating limit. If the initial corrective action is not successful, additional corrective action would be required within the next 24 hours. Plants would re-measure the operating parameter(s) and if the corrective action is successful, the emission unit would be in compliance with the applicable operating limit. If the second attempt at corrective action is not successful, the plant would report the exceedance as a deviation in the next semiannual compliance report.

In other amendments, we are proposing to clarify the requirements for establishing venturi scrubber parametric operating limits in 40 CFR 63.7824(b) by stating that plants may establish the limit during the initial performance test or during any other performance test that meets the emission limit. We are also proposing to revise the definition of ''ladle metallurgy'' by stating that vacuum degassing is not included in the definition. We are also proposing changes to Table 4 to 40 CFR part 63, subpart FFFFF, which would clarify the applicability of certain monitoring, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A) to the rule and correct errors in certain entries.

III. Rationale for the Proposed Amendments

A. Why Are We Proposing To Revise the Emission Limitations?

Sinter Coolers

The petitioners objected to the PM emission limit for sinter cooler stacks (0.03 gr/dscf) for a variety of reasons, including the lack of HAP data to support a standard, the *de minimus* nature of the emissions, and the high costs for testing and monitoring. In addition, several plants have coolers without stacks that cannot be tested by EPA Method 5 (40 CFR part 60, appendix A). Petitioners contend that an opacity limit would be technically feasible and consistent with State rules.

We agree with the commenters' concerns that the sinter cooler standard should accommodate coolers without stacks. For a sinter cooler at a new affected source, we are proposing to revise the current limit to apply to emissions from each sinter cooler rather than each sinter cooler stack. For sinter coolers at an existing affected source, we are proposing to revise the MACT floor based on State rules and new opacity data. As discussed below, the data clearly show that a 10 percent limit (6-minute average) provides a reasonably accurate picture of the performance achieved by the best-performing sources and can be achieved on a continuing basis.

Our review of sinter coolers indicate that some coolers do not have stacks, and their design and operation make it impractical to install a stack. As promulgated, the final rule does not apply an emission limit to coolers without stacks. We reviewed existing State regulations for sinter coolers and found that some States have opacity limits which provide a practical means for limiting emissions from coolers with and without stacks. The MACT floor based on current opacity limits is determined by the 10 percent (6-minute average) limit that applies to three sinter plants with five sinter coolers in Lake County, Indiana. See Indiana Administrative Code (IAC), 326 IAC 6–1–11.1(d)(7)(A)–(B). We attempted to obtain opacity data for these sources, but the coolers are seldom inspected by the State agency because they are such a low-emitting emission source. We also attempted to obtain self-monitoring data performed by the plants. Data were available for only one of the sinter plant coolers. The plant provided data for 366 observations covering 13 months. The 99th percentile of the observations was 8 percent opacity, and only two observations exceeded 10 percent. These data indicate that a MACT floor of 10 percent opacity based on current State regulations is a reasonable representation of the opacity that can be achieved on a continuing basis by sinter coolers. The proposed opacity limit would apply to the sinter cooler and any discharge of emissions from the cooler; it would not apply to the material transfer point where the sinter is removed from the cooler.

Discharges Inside Buildings

The petitioners explained that at some facilities, control devices discharge to the interior of buildings and not to the ambient air. Other facilities are able to meet opacity limits by using flame suppression and do not have a control device. Facilities with capture systems leading to a control device that then discharge within the building are in effect no different than those systems used to suppress emissions to meet the opacity limit for a building.

The petitioners are correct that the language of the emission limits in Table 1 to 40 CFR part 63, subpart FFFFF (''emissions discharged to the atmosphere''), could be construed to include emissions discharged inside buildings. This is not our intent. In response to the petitioners' concerns, we are proposing amendments to Table 1 to 40 CFR part 63, subpart FFFFF, that would add a footnote to each PM limit for a control device at an existing source stating that the limit does not apply to discharges inside a blast furnace casthouse, BOPF shop, or building housing the discharge end at a sinter plant. The applicable emission limit for these emissions and other fugitive emissions that are discharged through the roof monitor is the opacity limit for the building cited in Table 1 to 40 CFR part 63, subpart FFFFF.

Parametric Operating Limit for Electrostatic Precipitators

The NESHAP establish an operating limit for ESP that control emissions from a BOPF. Plant operators are to set the site-specific limit based on COMS measurements made during the performance test. The commenters contend that variations in BOPF operations make it impractical to set a parametric limit based on a short-term performance test. In addition, the presence of water vapor or steam, which is necessary for optimizing ESP performance, raises issues of interferences in COM readings. The commenters support a 20 percent opacity limit (6-minute average), consistent with State regulations, permit

requirements, and the NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (69 FR 55218, September 13, 2004). The petitioners also stated that exceedance of the parametric limit should result in triggering corrective action rather than a violation.

We agree with the petitioners' arguments and are proposing to change the ESP operating limit to a fixed opacity level of 10 percent. This proposed operating limit would be an hourly average to be consistent with other parametric operating limits for control devices. We are also proposing that plant operators take corrective action if the operating limit for an ESP or venturi scrubber is exceeded. The proposed amendments would require plant operators to initiate corrective action within 1 hour. If the limit is still exceeded after 24 hours (*i.e.*, the corrective action was unsuccessful), plant operators would need to take additional corrective action. If the operating limit is exceeded after 24 more hours, we are proposing that the exceedance would be reported as a deviation in the semiannual compliance report. These provisions would not apply in the event of a malfunction, which would be handled according to the startup, shutdown, and malfunction plan.

B. Why Are We Proposing To Amend Monitoring Requirements for Baghouses?

Baghouses Without Exhaust Stacks

The NESHAP require a bag leak detection system for each baghouse used to meet the PM limits. The petitioners point out that EPA's ''Fabric Filter Bag Leak Detection Guidance'' (EPA–454/R–98–015, September 1997) states that only fabric filters with exhaust stacks are covered by this guidance. Some of the emissions sources covered by the NESHAP use positive pressure baghouses which do not use an exhaust stack. EPA has recognized this problem in other rules.

We agree with the commenters that bag leak detection systems should not be required for fabric filters without exhaust stacks. In response to the commenters' concerns, we are proposing to revise the rule to clarify that bag leak detection systems are required only for negative pressure baghouses and positive pressure baghouses with a stack.

COMS as an Alternative to Bag Leak Detection Systems

The petitioners also point out that some companies already have COMS in place, may be required to install COMS due to State, local, or permit requirements, or may opt for COMS instead of bag leak detection systems if given the choice. These companies should not be required to operate duplicative baghouse monitoring systems.

We agree that COMS, which provide a direct measure of opacity, are certainly a suitable alternative to bag leak detection systems. In response to the petitioners' concerns, we are proposing to increase the flexibility of the NESHAP by adding COMS as a monitoring alternative. This approach is consistent with several other MACT standards, as well as the recent amendments to the new source performance standards (NSPS) for electric arc furnaces (70 FR 8523, February 22, 2005). The proposed amendments would require that the COMS for baghouses meet the same requirements as COMS for ESP. The same corrective action requirements for baghouses also would apply. If a bag leak detection system alarm is triggered or emissions from a baghouse equipped with a COMS exceed an hourly average opacity of 5 percent, the proposed amendments would require plants to initiate corrective action within specified time limits. We are proposing the 5 percent trigger because it is consistent with other MACT standards as well as with the amendments to the NSPS for electric arc furnaces cited above.

C. Why Are We Proposing To Revise the Requirements for Repeat Performance Tests?

The petitioners asked EPA to amend the rule to reduce the costs associated with demonstrating continuous compliance, particularly for well-controlled emissions sources. We are proposing to reduce the frequency of repeat PM and opacity performance tests from twice each permit term to once per term for emission units equipped with a baghouse. The reduced frequency would apply to minor emission units equipped with baghouses because performance would be continuously monitored by a bag leak detection system or COMS.

D. Why Are We Proposing To Revise the Definition of ''Ladle Metallurgy'' To Exclude Vacuum Degassing?

Vacuum degassing is an advanced steel refining process to remove oxygen, hydrogen, and nitrogen in a vacuum to produce ultra-low carbon steel for certain applications. As such, this process could fall within the definition of ''ladle metallurgy.'' The petitioners argue that EPA did not acknowledge the fundamental control technology differences for vacuum degassing operations compared to ladle metallurgy operations which are typically controlled by baghouses. They explain that many BOPF shops have vacuum degassing facilities and all use steam ejector/condenser systems; baghouses are not suitable control systems because of the inherent moisture in the gas downstream of the steam ejectors. Although PM emissions are low, these facilities would not be able to achieve the limit for new or existing ladle metallurgy operations.

We agree with the petitioners that the definition of ''ladle metallurgy'' (a secondary steelmaking process that is performed in a ladle after initial refining in a BOPF to adjust the chemical and/or mechanical properties of steel) could be interpreted to include vacuum degassing. In response to the petitioners' concerns, we are proposing to revise the definition of ''ladle metallurgy'' to specifically exclude vacuum degassing.

IV. Impacts of the Proposed Amendments

The proposed amendments would not affect the level of emissions control required by the existing NESHAP or the nonair, health, environmental, and energy impacts. However, the costs of implementing the existing rule would be reduced in future years. For example, the proposed reduction in subsequent performance tests for an emissions source equipped with a baghouse would reduce the nationwide cost of PM testing over the next 5 years from $270,000/year to $180,000/year, a savings of $90,000/year.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that these proposed amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and are, therefore, not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The proposed amendments provide additional flexibility through revised requirements for monitoring operational parameters which would not increase the existing information collection burden. Other proposed amendments, such as the reduction in subsequent PM performance tests for certain emissions sources, is expected to decrease the information collection burden in future years. However, OMB has previously approved the information collection requirements contained in the existing regulations (40 CFR part 63, subpart FFFFF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0517, EPA Information Collection Request (ICR) number 2003.02. A copy of the OMB approved ICR may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *Auby.Susan@epa.gov,* or by calling (202) 566–1672.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

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

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposed amendments would not impose any requirements on small entities. There are no small entities in the regulated industry. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation 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 the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments, because they contain no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the 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.''

The proposed amendments do not have federalism implications. They would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected plants are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the proposed amendments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The proposed amendments do not have tribal implications, as specified in Executive Order 13175. They would 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. No tribal governments own plants subject to the MACT standards for integrated iron and steel manufacturing. Thus, Executive Order 13175 does not apply to today's proposed amendments. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant,'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA 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 EPA.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The proposed amendments are not subject to the Executive Order because they are based on control technology and not on health or safety risks.

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

The proposed amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Under 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 (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

The proposed amendments do not involve technical standards. Therefore, EPA is not considering the use of any VCS.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 23, 2005.

Stephen L. Johnson,

Administrator.

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

PART 63—[AMENDED]

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

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

Subpart FFFFF—[AMENDED]

2. Section 63.7790 is amended by revising paragraph (b)(3) to read as follows:

§ 63.7790 What emission limitations must I meet?

* * * * *

(b) * * *

(3) For each electrostatic precipitator applied to emissions from a BOPF, you must maintain the hourly average opacity of emissions exiting the control device at or below 10 percent.

* * * * *

3. Section 63.7800 is amended by:

a. Revising the second sentence in the introductory text of paragraph (b);

b. Revising the introductory text of paragraph (b)(4);

c. Revising paragraph (b)(4)(vi);

d. Redesignating paragraph (b)(5) as (b)(7); and

e. Adding new paragraphs (b)(5) and (b)(6) to read as follows:

§ 63.7800 What are my operation and maintenance requirements?

* * * * *

(b) * * * Each plan must address the elements in paragraphs (b)(1) through (7) of this section.

* * * * *

(4) Corrective action procedures for baghouses equipped with bag leak detection systems or continuous opacity monitoring systems (COMS). In the event a bag leak detection system alarm is triggered or emissions from a baghouse equipped with a COMS exceed an hourly average opacity of 5 percent, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Corrective actions may include, but are not limited to:

* * * * *

(vi) Shutting down the process producing the particulate emissions.

(5) Corrective action procedures for venturi scrubbers equipped with continuous parameter monitoring systems (CPMS). In the event a venturi scrubber exceeds the operating limit in § 63.7790(b)(2), you must take corrective actions consistent with your site-specific monitoring plan in accordance with § 63.7831(a).

(6) Corrective action procedures for electrostatic precipitators equipped with COMS. In the event an electrostatic precipitator exceeds the operating limit in § 63.7790(b)(3), you must take corrective actions consistent with your site-specific monitoring plan in accordance with § 63.7831(a).

* * * * *

4. Section 63.7821 is revised to read as follows:

(a) You must conduct subsequent performance tests to demonstrate compliance with all applicable PM and opacity limits in Table 1 to this subpart at the frequencies specified in paragraphs (b) through (d) of this section.

(b) For each sinter cooler at an existing sinter plant and each emissions unit equipped with a control device other than a baghouse, you must conduct subsequent performance tests no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

(c) For each emissions unit equipped with a baghouse, you must conduct subsequent performance tests no less frequently than once during each term of your title V operating permit.

(d) For sources without a title V operating permit, you must conduct subsequent performance tests every 2.5 years.

5. Section 63.7823 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 63.7823 What test methods and other procedures must I use to demonstrate initial compliance with the opacity limits?

* * * * *

(c) To determine compliance with the applicable opacity limit in Table 1 to this subpart for a sinter cooler at an existing sinter plant, a sinter plant discharge end, or a blast furnace casthouse:

* * * * *

6. Section 63.7824 is amended by:

a. Adding a second sentence to the introductory text of paragraph (b);

b. Revising paragraph (b)(1);

c. Removing paragraph (c);

d. Redesignating paragraphs (d) through (g) as paragraphs (c) through (f);

e. Revising the introductory text of newly designated paragraph (c) and newly designated paragraph (c)(3);

f. Revising the introductory text of newly designated paragraph (d); and

g. Revising the introductory text of newly designated paragraph (e) and newly designated paragraph (e)(4) to read as follows:

§ 63.7824 What test methods and other procedures must I use to establish and demonstrate initial compliance with operating limits?

* * * * *

(b) * * * You may establish the parametric monitoring limit during the initial performance test or during any other performance test run that meets the emission limit.

(1) Using the CPMS required in § 63.7830(c), measure and record the pressure drop and scrubber water flow rate during each run of the particulate matter performance test.

* * * * *

(c) You may change the operating limits for a capture system or venturi scrubber if you meet the requirements in paragraphs (c)(1) through (3) of this section.

* * * * *

(3) Establish revised operating limits according to the applicable procedures in paragraphs (a) and (b) of this section for a control device or capture system.

(d) For each sinter plant subject to the operating limit for the oil content of the sinter plant feedstock in § 63.7790(d)(1), you must demonstrate initial compliance according to the procedures in paragraphs (d)(1) through (3) of this section.

* * * * *

(e) To demonstrate initial compliance with the alternative operating limit for volatile organic compound emissions from the sinter plant windbox exhaust stream in § 63.7790(d)(2), follow the test methods and procedures in paragraphs (e)(1) through (5) of this section.

* * * * *

(4) Continue the sampling and analysis procedures in paragraphs (e)(1) through (3) of this section for 30 consecutive days.

* * * * *

7. Section 63.7825 is amended by:

a. Revising paragraphs (a)(2) and (a)(3);

b. Removing paragraph (a)(4); and

c. Revising paragraph (b) to read as follows:

§ 63.7825 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) * * *

(2) For each capture system subject to the operating limit in § 63.7790(b)(1), you have established appropriate site-specific operating limit(s) and have a record of the operating parameter data measured during the performance test in accordance with § 63.7824(a)(1); and

(3) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7824(b).

(b) For each existing or new sinter plant subject to the operating limit in § 63.7790(d)(1), you have demonstrated initial compliance if the 30-day rolling average of the oil content of the feedstock, measured during the initial performance test in accordance with § 63.7824(d) is no more than 0.02 percent. For each existing or new sinter plant subject to the alternative operating limit in § 63.7790(d)(2), you have demonstrated initial compliance if the 30-day rolling average of the volatile organic compound emissions from the sinter plant windbox exhaust stream, measured during the initial performance test in accordance with § 63.7824(e) is no more than 0.2 lb/ton of sinter produced.

* * * * *

8. Section 63.7826 is amended by revising paragraph (b)(1) to read as follows:

§ 63.7826 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

* * * * *

(b) * * *

(1) Prepared the control device operation and maintenance plan according to the requirements of § 63.7800(b), including a preventative maintenance schedule and, as applicable, detailed descriptions of the corrective action procedures for baghouses and other control devices;

* * * * *

9. Section 63.7830 is amended by revising paragraphs (b), (d), (e)(1), and (e)(2) to read as follows:

§ 63.7830 What are my monitoring requirements?

* * * * *

(b) Except as provided in paragraph (b)(3) of this section, you must meet the requirements in paragraph (b)(1) or (2) of this section for each baghouse applied to meet any particulate emission limit in Table 1 of this subpart. You must conduct inspections of each baghouse according to the requirements in paragraph (b)(4) of this section.

(1) Install, operate, and maintain a bag leak detection system according to § 63.7831(f) and monitor the relative change in particulate matter loadings according to the requirements in § 63.7832; or

(2) If you do not install and operate a bag leak detection system, you must install, operate, and maintain a COMS according to the requirements in § 63.7831(h) and monitor the hourly average opacity of emissions exiting each control device stack according to the requirements in § 63.7832.

(3) A bag leak detection system and COMS are not required for a baghouse that meets the requirements in paragraphs (b)(3)(i) and (ii) of this section.

(i) The baghouse is a positive pressure baghouse and is not equipped with exhaust gas stacks; and

(ii) The baghouse was installed before August 30, 2005.

(4) You must conduct inspections of each baghouse at the specified frequencies according to the requirements in paragraphs (b)(4)(i) through (viii) of this section.

(i) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual.

(ii) Confirm that dust is being removed from hoppers through weekly visual inspections or other means of ensuring the proper functioning of removal mechanisms.

(iii) Check the compressed air supply for pulse-jet baghouses each day.

(iv) Monitor cleaning cycles to ensure proper operation using an appropriate methodology.

(v) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means.

(vi) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices.

(vii) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks.

(viii) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

* * * * *

(d) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you must install, operate, and maintain a COMS according to the requirements in § 63.7831(h) and monitor the hourly average opacity of emissions exiting each control device stack according to the requirements in § 63.7832.

(e) * * *

(1) Compute and record the 30-day rolling average of the oil content of the feedstock for each operating day using the procedures in § 63.7824(d); or

(2) Compute and record the 30-day rolling average of the volatile organic compound emissions (lbs/ton of sinter) for each operating day using the procedures in § 63.7824(e).

10. Section 63.7831 is amended by:

a. Revising the introductory text of paragraph (a), revising paragraphs (a)(5) and (a)(6), and adding new paragraphs (a)(7) and (a)(8);

b. Revising the introductory text of paragraph (f); and

c. Revising the introductory text of paragraph (h) and revising paragraph (h)(4) to read as follows:

§ 63.7831 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each CPMS required in § 63.7830, you must develop and make available for inspection upon request by the permitting authority a site-specific monitoring plan that addresses the requirements in paragraphs (a)(1) through (8) of this section.

* * * * *

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d);

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), paragraph (e)(1), and paragraph (e)(2)(i);

(7) Corrective action procedures you will follow in the event a venturi scrubber exceeds the operating limit in § 63.7790(b)(2); and

(8) Corrective action procedures you will follow in the event an electrostatic precipitator exceeds the operating limit in § 63.7790(b)(3).

* * * * *

(f) For each baghouse equipped with a bag leak detection system according to § 63.7830(b)(1), you must install, operate, and maintain the bag leak detection system according to the requirements in paragraphs (f)(1) through (7) of this section.

* * * * *

(h) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3) and each baghouse equipped with a COMS according to § 63.7830(b)(2), you must install, operate, and maintain each COMS according to the requirements in paragraphs (h)(1) through (4) of this section.

* * * * *

(4) COMS data must be reduced to 6-minute averages as specified in § 63.8(g)(2) and to hourly averages where required by this subpart FFFFF.

11. Section 63.7833 is amended by:

a. Revising paragraph (c);

b. Revising the introductory text of paragraph (d) and adding new paragraph (d)(4);

c. Revising the introductory text of paragraph (e), revising paragraph (e)(1), and adding new paragraph (e)(3);

d. Revising paragraphs (f)(1)(i) and (f)(2)(i); and

e. Adding new paragraph (g) to read as follows:

§ 63.7833 How do I demonstrate continuous compliance with the emission limitations that apply to me?

* * * * *

(c) For each baghouse applied to meet any particulate emission limit in Table 1 to this subpart, you must demonstrate continuous compliance by meeting the requirements in paragraph (c)(1) or (2) as applicable, and paragraphs (c)(3) and (4) of this section:

(1) For a baghouse equipped with a bag leak detection system, operating and maintaining each bag leak detection system according to § 63.7831(f) and recording all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7831(f)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(2) For a baghouse equipped with a COMS, operating and maintaining each COMS and reducing the COMS data according to § 63.7831(h).

(3) Inspecting each baghouse according to the requirements in § 63.7830(b)(4) and maintaining all records needed to document conformance with these requirements.

(4) Maintaining records of the time you initiated corrective action in the event of a bag leak detection system alarm or when the hourly average opacity exceeded 5 percent, the corrective action(s) taken, and the date on which corrective action was completed.

(d) For each venturi scrubber subject to the operating limits for pressure drop and scrubber water flow rate in § 63.7790(b)(2), you must demonstrate continuous compliance by meeting the requirements of paragraphs (d)(1) through (4) of this section:

* * * * *

(4) If the hourly average pressure drop or scrubber water flow rate is below the operating limits, you must follow the corrective action procedures in paragraph (g) of this section.

(e) For each electrostatic precipitator subject to the opacity operating limit in § 63.7790(b)(3), you must demonstrate continuous compliance by meeting the requirements of paragraphs (e)(1) through (3) of this section:

(1) Maintaining the hourly average opacity of emissions no higher than 10 percent; and

* * * * *

(3) If the hourly average opacity of emissions exceeds 10 percent, you must follow the corrective action procedures in paragraph (g) of this section.

(f) * * *

(1) * * *

(i) Computing and recording the 30-day rolling average of the percent oil content for each operating day according to the performance test procedures in § 63.7824(d);

* * * * *

(2) * * *

(i) Computing and recording the 30-day rolling average of the volatile organic compound emissions for each operating day according to the performance test procedures in § 63.7824(e);

* * * * *

(g) If the hourly average pressure drop or water flow rate for a venturi scrubber or hourly average opacity for an electrostatic precipitator exceeds the operating limit, you must follow the procedures in paragraphs (g)(1) through (4) of this section.

(1) You must initiate corrective action to determine the cause of the exceedance within 1 hour. During any period of corrective action, you must continue to monitor and record all required operating parameters for equipment that remains in operation. Within 24 hours of the exceedance, you must measure and record the hourly average operating parameter value for the emission unit on which corrective action was taken. If the hourly average parameter value meets the applicable operating limit, then the corrective action was successful, and the emission unit is in compliance with the applicable operating limit.

(2) If the initial corrective action required in paragraph (g)(1) of this section was not successful, you must complete additional corrective action within the next 24 hours (48 hours from the time of the exceedance). During any period of corrective action, you must continue to monitor and record all required operating parameters for equipment that remains in operation. After this second 24 hour period, you must again measure and record the hourly average operating parameter value for the emission unit on which corrective action was taken. If the hourly average parameter value meets the applicable operating limit, then the corrective action was successful, and the emission unit is in compliance with the applicable operating limit.

(3) For purposes of paragraphs (g)(1) and (2) of this section, in the case of an exceedance of the hourly average opacity operating limit for an electrostatic precipitator, measurements of the hourly average opacity based on visible emission observations in accordance with Method 9 (40 CFR part 60, appendix A) may be taken to evaluate the effectiveness of corrective action.

(4) If the second attempt at corrective action required in paragraph (g)(2) of this section was not successful, you must report the exceedance as a deviation in your next semiannual compliance report according to § 63.7841(b).

12. Section 63.7834 is amended by revising paragraph (a) to read as follows:

§ 63.7834 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each capture system and control device subject to an operating limit in § 63.7790(b), you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7800(b) by meeting the requirements of paragraphs (a)(1) through (4) of this section:

(1) Making monthly inspections of capture systems and initiating corrective action according to § 63.7800(b)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance according to § 63.7800(b)(2) and recording all information needed to document conformance with these requirements;

(3) Initiating and completing corrective action for a baghouse equipped with a bag leak detection system or COMS according to § 63.7800(b)(4) and recording all information needed to document conformance with these requirements, including the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action was completed.

(4) Initiating and completing corrective action for a venturi scrubber equipped with a CPMS or an electrostatic precipitator equipped with a COMS according to § 63.7833(g) and recording all information needed to document conformance with these requirements, including the time you initiated corrective action, the corrective action(s) taken within the first 24 hours according to § 63.7833(g)(1) and whether they were successful, the corrective action(s) taken within the second 24 hours according to § 63.7833(g)(2) and whether they were successful, and the date on which corrective action was completed.

* * * * *

13. Section 63.7835 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 63.7835 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* Except as provided in § 63.7833(g), you must report each instance in which you did not meet each emission limitation in § 63.7790 that applies to you. * * *

* * * * *

14. Section 63.7851 is amended by revising paragraph (c)(2) to read as follows:

§ 63.7851 Who implements and enforces this subpart?

* * * * *

(c) * * *

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and paragraph (f) and as defined in § 63.90, except for approval of an alternative method for the oil content of the sinter plant feedstock or volatile organic compound measurements for the sinter plant windbox exhaust stream stack as provided in § 63.7824(f).

* * * * *

15. Section 63.7852 is amended by revising the definition of term ''Ladle metallurgy'' to read as follows:

§ 63.7852 What definitions apply to this subpart?

* * * * *

Ladle metallurgy means a secondary steelmaking process that is performed typically in a ladle after initial refining in a basic oxygen process furnace to adjust or amend the chemical and/or mechanical properties of steel. This definition does not include vacuum degassing.

* * * * *

16. Table 1 to subpart FFFFF of part 63 is amended by revising entries 3, 5, 6, 7, 9, 10, and 11; and by revising the footnotes to read as follows:

TABLE 1 TO SUBPART FFFFF OF PART 63.—EMISSION AND OPACITY LIMITS

For . . .	You must comply with each of the following . . .
* * *	* * * * * * *
3. Each discharge end at an existing sinter plant.	a. You must not cause to be discharged to the atmosphere any gases that exit from one or more control devices that contain, on a flow-weighted basis, particulate matter in excess of 0.02 gr/dscf [1] [2] and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the building or structure housing the discharge end that exhibit opacity greater than 20 percent (6-minute average).
* * *	* * * * * * *
5. Each sinter cooler at an existing sinter plant.	You must not cause to be discharged to the atmosphere any emissions that exhibit opacity greater than 10 percent (6-minute plant. average).
6. Each sinter cooler at a new sinter plan	You must not cause to be discharged to the atmosphere any gases that contain particulate matter in excess of 0.01 gr/dscf.
7. Each casthouse at an existing blast furnace.	a. You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf [2]; and b. You must not cause to be discharged to the atmosphere any secondary emissions that exit any opening in the casthouse or structure housing the blast furnace that exhibit opacity greater than 20 percent (6-minute average).
* * *	* * * * * * *
9. Each BOPF at a or existing shop	a. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with a closed hood system at a new or existing BOPF shop that contain, on a flow-weighted basis, particulate matter in excess of 0.03 gr/dscf during the primary oxygen blow [2] [3]; and b. You must not cause to be discharged to the atmosphere any gases that exit from a primary emission control system for a BOPF with an open hood system that contain, on a flow-weighted basis, particulate matter in excess of 0.02 gr/dscf during the steel production cycle for an existing BOPF shop [2] [3] or 0.01 gr/dscf during the steel production cycle for a new BOPF shop [3]; and c. You must not cause to be discharged to the atmosphere any gases that exit from a control device used solely for the collection of secondary emissions from the BOPF that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop [2] or 0.0052 gr/dscf for a new BOPF shop.
10. Each hot metal transfer, skimming, and desulfurization operation at a new or existing BOPF shop.	You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of 0.01 gr/dscf for an existing BOPF shop [2] or 0.003 gr/dscf for a new BOPF shop.
11. Each ladle metallurgy operation at a new or existing BOPF shop.	You must not cause to be discharged to the atmosphere any gases that exit from a control device that contain particulate matter in excess of BOPF shop [2] or 0.004 gr/dscf for a new BOPF shop.
* * *	* * * * * * *

[1] This limit applies if the cooler is vented to the same control device as the discharge end.
[2] This concentration limit (gr/dscf) for a control device does not apply to discharges inside a building or structure housing the discharge end at an existing sinter plant, inside a casthouse at an existing blast furnace, or inside an existing BOPF shop that is subject to a roof monitor opacity limit in Table 1 to this subpart.
[3] This limit applies to control devices operated in parallel for a single BOPF during the oxygen blow.

17. Table 2 to subpart FFFFF of part 63 is amended by revising entries 5 and 6 as follows:

TABLE 2 TO SUBPART FFFFF OF PART 63.—INITIAL COMPLIANCE WITH EMISSION AND OPACITY LIMITS

For . . .	You have demonstrated initial compliance if . . .
* * *	* * * * * * *
5. Each sinter cooler at an existing sinter plant.	The opacity of emissions, determined according to the performance test procedures in § 63.7823(c), did not exceed 10 percent (6-minute average).
6. Each sinter cooler at a new sinter plant.	The average concentration of particulate matter, measured according to the performance test procedures in § 63.7822(b), did not exceed 0.01 gr/dscf.
* * *	* * * * * * *

18. Table 3 to subpart FFFFF of part 63 is revised to read as follows:

TABLE 3 TO SUBPART FFFFF OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION AND OPACITY LIMITS

As required in § 63.7833(a), you must demonstrate continuous compliance with the emission and opacity limits according to the following table.

For . . .	You must demonstrate continuous compliance by . . .
1. Each windbox exhaust stream at an existing sinter plant	a. Maintaining emissions of particulate matter at or below 0.4 lb/ton of product sinter; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
2. Each windbox exhaust stream at a new sinter plant	a. Maintaining emissions of particulate matter at or below 0.3 lb/ton of product sinter; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
3. Each discharge end at an existing sinter plant.	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.02 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 20 percent (6-minute average); and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
4. Each discharge end at a new sinter plant.	a. Maintaining emissions of particulate matter from one or more control devices at or below 0.01 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the building or structure housing the discharge end at or below 10 percent (6-minute average); and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
5. Each sinter cooler at an existing sinter plant.	a. Maintaining the opacity of emissions that exit any sinter cooler at or below 10 percent (6-minute average); and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
6. Each sinter cooler at a new sinter plant.	a. Maintaining emissions of particulate matter at or below 0.1 gr/dscf; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
7. Each casthouse at an existing blast furnace.	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or structure housing the casthouse at or below 20 percent (6-minute average); and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
8. Each casthouse at a new blast furnace.	a. Maintaining emissions of particulate matter from a control device at or below 0.003 gr/dscf; and b. Maintaining the opacity of secondary emissions that exit any opening in the casthouse or structure housing the casthouse at or below 15 percent (6-minute average); and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
9. Each BOPF at a new or existing BOPF shop.	a. Maintaining emissions of particulate matter from the primary control system for a BOPF with a closed hood system at or below 0.03 gr/dscf; and b. Maintaining emissions of particulate matter from the primary control system for a BOPF with an open hood system at or below 0.02 gr/dscf for an existing BOPF shop or 0.01 gr/dscf for a new BOPF shop; and c. Maintaining emissions of particulate matter from a control device applied solely to secondary emissions from a BOPF at or below 0.01 gr/dscf for an existing BOPF shop or 0.0052 gr/dscf for a new BOPF shop; and d. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
10. Each hot metal transfer, skimming, and desulfurization operation at a new or existing BOPF shop	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf at an existing BOPF or 0.003 gr/dscf for a new BOPF; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
11. Each ladle metallurgy operation at a new or existing BOPF shop	a. Maintaining emissions of particulate matter from a control device at or below 0.01 gr/dscf at an existing BOPF shop or 0.004 gr/dscf for a new BOPF shop; and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
12. Each roof monitor at an existing BOPF shop.	a. Maintaining the opacity of secondary emissions that exit any opening in the BOPF shop or other building housing the BOPF shop or shop operation at or below 20 percent (3-minute average); and b. Conducting subsequent performance tests at the frequencies specified in § 63.7821.
13. Each roof monitor at a new BOPF shop.	a. Maintaining the opacity (for any set of 6-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a bottom-blown BOPF or shop operation at or below 10 percent, except that one 6-minute period greater than 10 percent but no more than 20 percent may occur once per steel production cycle; and b. Maintaining the opacity (for any set of 3-minute averages) of secondary emissions that exit any opening in the BOPF shop or other building housing a top-blown BOPF or shop operation at or below 10 percent, except that one 3-minute period greater than 10 percent but less than 20 percent may occur once per steel production cycle; and c. Conducting subsequent performance tests at the frequencies specified in § 63.7821.

19. Table 4 to subpart FFFFF of part 63 is amended by revising entry § 63.6(h)(2)(i) and entries §§ 63.8 through 63.10 as follows:

* * * * *

TABLE 4 TO SUBPART FFFFF OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART FFFFF

Citation	Subject	Applies to Subpart FFFFF	Explanation
* *	* *	*	* *
§ 63.6(h)(2)(i)	Determining Compliance with Opacity and VE Standards.	No	Subpart FFFFF specifies methods and procedures for determining compliance with opacity emission and operating limits.
* *	* *	*	* *
§ 63.8(a)(1)–(3), (b), (c)(1)–(3), (c)(4)(i)–(ii), (c)(5)–(6), (c)(7)–(8), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	CMS requirements in §§ 63.8(c)(4)(i)–(ii), (c)(5)–(6), (d), and (e) apply only to COMS.
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Subpart FFFFF does not require flares.
§ 63.8(c)(4)	Continuous Monitoring System Requirements.	No	Subpart FFFFF specifies requirements for operation of CMS.
§ 63.8(f)(6)	RATA Alternative	No.	
§ 63.8(g)(5)	Data Reduction	No	Subpart FFFFF specifies data reduction requirements.
§ 63.9	Notification Requirements	Yes	Additional notifications for CMS in § 63.9(g) apply only to COMS.
§ 63.10(a), (b)(1), (b)(2)(i)–(xii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d), (e)(1)–(2), (e)(4), (f)	Recordkeeping and Reporting Requirements.	Yes	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply only to COMS.
§ 63.10(b)(2) (xiii)	CMS Records for RATA Alternative	No.	
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart FFFFF specifies record requirements.
§ 63.10(e)(3)	Excess Emission Reports	No	Subpart FFFFF specifies reporting requirements.
* *	* *	*	* *

[FR Doc. 05–17193 Filed 8–29–05; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7962–3]

RIN 2060–AN13

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide for the 2005 Supplemental Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action EPA is proposing to authorize use of 610,665 kilograms of methyl bromide for supplemental critical uses in 2005 through the allocation of additional critical stock allowances (CSAs). This allocation would supplement the critical use allowances (CUAs) and CSAs previously allocated for 2005, as published in the **Federal Register** on December 23, 2004 (69 FR 76982). Further, EPA is proposing to amend the existing list of exempted critical uses. With today's action EPA is proposing to exempt methyl bromide for critical uses beyond the phaseout under the authority of the Clean Air Act (CAA or the Act) and in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). In the ''Rules and Regulations'' section of today's **Federal Register**, we are authorizing these CSAs and critical uses as a direct final rule without prior proposal because we view this as a noncontroversial action and expect no adverse comment. We have explained our reasons for this authorization in the Preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in the subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments on the companion direct final rule must be received on or before September 29, 2005, or October 14, 2005 if a hearing is requested. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on September 9, 2005. If a hearing is requested it will be held September 14, 2005. Persons interested in attending a public hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0506, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *mebr.allocation@epa.gov*
- Fax: 202–343–2337 attn: Marta Montoro
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and

Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

• *Hand Delivery:* EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0506. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Marta Montoro by telephone at (202) 343–9321, or by e-mail at *mebr.allocation@epa.gov*, or by mail at Marta Montoro, U.S. Environmental Protection Agency, Stratospheric Protection Division, (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to 1310 L St. NW., Washington, DC 20005, attn: Marta Montoro. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: This document concerns the authorization of an additional 610,655 kilograms of methyl bromide for approved critical uses during 2005, through the allocation of CSAs. It also concerns additions to the list of approved critical uses for this control period. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

This action concerns regulation of methyl bromide pursuant to the CAA as a class I, Group VI ozone-depleting substance. Under the CAA, methyl bromide production and consumption (defined as production plus imports minus exports) were phased out on January 1, 2005, apart from certain exemptions, including the critical use exemption, which is the subject of today's rule. In a final rule published December 23, 2004 (69 FR 76982), EPA established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet approved critical uses. As part of that rule, EPA issued critical use allowances (CUAs) for new production and import and critical stock allowances (CSAs) for sale of methyl bromide stocks. In today's action, EPA is proposing to add uses of methyl bromide to the list of approved critical uses and to issue additional CSAs for the 2005 control period. These actions are in accordance with Decision XVI/2 of the countries that have ratified the Montreal Protocol (the ''Parties''), taken at their November 2004 meeting.

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

This proposed action will likely have a minor cost savings associated with its implementation, but the Agency did not conduct a formal analysis of savings given that such an analysis would have resulted in negligible savings. This proposed action represents the authorization only 2.5% of 1991 consumption baseline of methyl bromide to be made available for critical uses.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number

1432.28 and OMB Control Number 2060–0170. This rule supplements the rule published in the **Federal Register** on December 23, 2004 (69 FR 76982). The information collection under these rules is authorized under Sections 603(b), 603(d) and 614(b) of the Clean Air Act (CAA).

The mandatory reporting requirements included in these rules are intended to:

(1) Satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(2) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(3) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

In this rule, EPA is proposing to amend the Reporting and Recordkeeping Requirements in 40 CFR part 82 to require that entities report the amount of pre-phaseout methyl bromide inventory, held for sale or for transfer to another entity, to the Agency on an annual basis. Pre-phaseout refers to inventories of methyl bromide produced or imported prior to January 1, 2005. This additional requirement will allow EPA to track the drawdown of pre-phaseout inventories.

Collection activity	Number of respondents	Total number of responses	Hours per response	Total hours
Rule Familiarization	54	54	.5	27
Data Compilation (annual basis)	54	54	.5	27
Data Reporting (annual basis)	54	54	.5	27
Total Burden Hours		162		81

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

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; process and maintain information; disclose and provide 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 are listed in 40 CFR part 9 and 48 CFR Chapter 15.

When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in these rules.

To obtain comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. EPA has established a public docket for this rule, which includes this ICR, under Electronic Docket ID number OAR–2004–0506. Submit any comments related to the rule ICR for this proposed rule to EPA and OMB. See ''Addresses'' Section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington DC 20503 attn: Desk Officer for EPA. Include the EPA ICR number 1432.28 in correspondence related to this ICR.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 30, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by September 29, 2005. The final rule will respond to any OMB or public concerns on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
Agricultural Production ..	1112—Vegetable and Melon farming	0171—Berry	$0.75
		0171—Berry Crops	
	1114—Greenhouse, Nursery, and Floriculture Production.	0181—Ornamental Floriculture and Nursery products.	
Storage Uses	115114—Postharvest crop activities (except Cotton Ginning).	4221—Farm Product Warehousing and Storage	$21.5
	493110—General Warehousing and Storage	4225—General Warehousing and Storage.	
	493130—Farm product Warehousing Storage.		

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. Based on the data provided, EPA estimates that there are 3,218 entities that petitioned EPA for an exemption. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that between ¼ to ⅓ of the entities may be small businesses based on the definition given above. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are primarily agricultural entities, producers, importers, and distributors of methyl bromide, as well as any entities holding inventory of methyl bromide.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. §§ 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule will make additional methyl bromide available for approved critical uses after the phaseout date of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million to $30 million annually, as a result of the entire critical use exemption program over its projected duration. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local and tribal governments, in the aggregate, or by 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 of 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 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 this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. Today's proposed rule contains only one new mandate, which is the reporting requirement for the drawdown of pre-phaseout inventories. Today's amendment does not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under Section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected State, local, and tribal officials under Section 204.

E. Executive Order 13132: Federalism

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

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed 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 proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under 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.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. The National Technology Transfer and Advancement Act

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

Dated: August 23, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–17190 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 410

[CMS–6024–P]

RIN 0938–AN10

Medicare Program; Prior Determination for Certain Items and Services

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: Section 938 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires the Secretary to establish a process for Medicare contractors to provide eligible participating physicians and beneficiaries with a determination of coverage relating to medical necessity for certain physicians' services before the services are furnished. This rule is intended to afford the physician and beneficiary the opportunity to know the financial liability for a service before expenses are incurred. This proposed rule would establish reasonable limits on physicians' services for which a prior determination of coverage may be requested and discusses generally our plans for establishing the procedures by which those determinations may be obtained.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on October 31, 2005.

ADDRESSES: In commenting, please refer to file code CMS–6024–P. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments to *http://www.cms.hhs.gov/regulations/ecomments* or to *http://www.regulations.gov* (attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word).

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6024–P, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Misty Whitaker, (410) 786–3087.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–6024–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

Section 1862(a)(1)(A) of the Social Security Act (the Act) prohibits Medicare payments for items and services that are not reasonable and necessary for the diagnosis and treatment of an illness or injury. However, section 1879 of the Act provides that under certain circumstances Medicare will pay for services that are not considered reasonable and necessary if both the beneficiary and physician did not know and could not have reasonably been expected to know that Medicare payment would not be made.

A physician may be held financially liable for noncovered services he or she furnishes if, for example, the Medicare contractor or CMS publishes specific requirements for those services or the physician has received a denial or reduction of payment for the same or similar service under similar circumstances. In cases where the physician believes that the service may not be covered as reasonable and necessary, an acceptable advance notice of Medicare's possible denial of payment must be given to the patient if the physician does not want to accept financial responsibility for the service. These notices are referred to as Advance Beneficiary Notices (ABNs).

ABNs must be given in writing, in advance of providing the service; include the description of service, as well as reasons why the service would not be covered; and must be signed and dated by the beneficiary to indicate that the beneficiary will assume financial responsibility for the service if Medicare payment is denied or reduced.

Notwithstanding these ABNs, there is the potential that beneficiaries may be discouraged from obtaining services because they are uncertain whether or not Medicare contractors will deem them reasonable and necessary. Currently, beneficiaries can find out whether or not items or services are generally covered. However, when there is a question of whether Medicare will cover a specific item or service for a particular beneficiary under specific circumstances, there currently exists no process by which the beneficiary or his or her physician can find out if that item or service would be considered reasonable and necessary for that beneficiary before incurring financial liability.

To address this issue, section 938 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, enacted on December 8, 2003) (MMA) requires the Secretary to establish a process whereby eligible requesters may submit to the contractor a request for a determination, before the furnishing of the physician's service, as to whether the physician's service is covered consistent with the applicable requirements of section 1862(a)(1)(A) of the Act (relating to medical necessity). This MMA section also provides that an eligible requester is either: A participating physician, but only with respect to physicians' services to be furnished to an individual who is entitled to benefits and who has consented to the physician making the request for those services; or an individual entitled to benefits, but only with respect to a physician's service for which the individual receives an advance beneficiary notice under section 1879(a) of the Act.

Requesting a prior determination under this proposed process is at the discretion of the eligible beneficiary or physician. Full knowledge regarding financial liability for the service would be available to physicians and beneficiaries before expenses are incurred, but prior determination of coverage is not required for submission of a claim.

This proposed rule would establish reasonable limits on the physicians' services for which a prior determination of coverage may be requested and discusses generally our plans for establishing the process by which prior determinations may be obtained. The procedures that Medicare contractors would use to make the determinations would be established in our manuals.

II. Provisions of the Proposed Rule

[If you choose to comment on issues in this section, please include the caption ''Provisions of the Proposed Rule'' at the beginning of your comments.]

Section 1869(h)(1) of the Act, as added by section 938 of the MMA, requires the Secretary to establish a prior determination process for certain physicians' services. Sections 1869(h)(3) through (6) of the Act are specific with respect to various aspects of the prior determination process, and we intend to follow these and any other applicable provisions in establishing the prior determination process. We intend to issue the detailed procedures through our instructions to contractors in our manuals.

Section 1869(h)(2) of the Act, as added by section 938 of the MMA, requires the Secretary to establish by regulation reasonable limits on the

physicians' services for which a prior determination may be requested. This section provides that in establishing the reasonable limits, the Secretary may consider the dollar amount involved with respect to the physician's service, administrative costs and burdens, and other relevant factors.

We evaluated national data on physicians' services including payment amounts, utilization, and denial rates. We considered using denial rates as one of the factors to be considered, but we have decided to use other factors instead. Although a service may have a relatively high denial rate, that number may be insignificant depending on the number of services performed annually.

Based on our analysis, we are proposing to establish an initial pool of eligible physicians' services comprised of at least those 50 services with the highest allowed average charges that are performed at least 50 times annually. We will exclude from this initial pool any services for which a national or local coverage determination exists that, based on CMS' judgment, has sufficiently specific reasonable and necessary criteria to permit the beneficiary or physician to know whether the service is covered without a prior determination. We expect the number of physicians' services in the final list, after excluding services with adequate national and local coverage determinations, may be fewer than 50. We propose to start with at least 50 physicians' services in the initial pool, but may expand the number of services eligible for the prior determination pool in the future if the need arises. In addition, we propose to allow prior determination for plastic and covered dental surgeries that may be covered by Medicare and that have an average allowed charge of at least $1,000.

Specifically, in 42 CFR 410.20(d)(1), we propose to define a prior determination of medical necessity as a decision by a Medicare contractor, before a physician's service is furnished, as to whether or not the physician's service is covered consistent with the requirements of section 1862(a)(1)(A) of the Act relating to medical necessity.

In § 410.20(d)(2), we propose that each Medicare contractor must, through the procedure established in CMS instructions, allow requests for prior determinations from eligible requesters under the contractor's respective jurisdiction for those services identified by CMS and posted on that specific Medicare contractor's Web site. Only those services listed on the date the request for a prior determination is made would be subject to prior determination.

Each contractor's list would consist of the following: At least the 50 most expensive physicians' services listed in the national ceiling fee schedule amount of the Medicare Physician Fee Schedule Database performed at least 50 times annually minus those services excluded by § 410.20(d)(3) (with adequate national or local coverage determinations); and plastic and dental surgeries that may be covered by Medicare and that have an average allowed charge of at least $1,000.

We have three reasons for proposing to establish the limit on physicians' services based on the dollar amount of the service and including certain plastic and dental surgeries. First, beneficiaries are more likely to be discouraged from obtaining the most expensive physicians' services because they are uncertain whether or not they would have to incur financial liability if Medicare does not pay for the service. The plastic and dental surgeries included are also relatively expensive, and there may be significant individual considerations in determining what is covered and what is excluded. Second, the majority of these services tend to be non-emergency surgical procedures generally performed in an inpatient setting. Since these services are not typically emergency services, beneficiaries would have adequate time to request a prior determination. Third, limiting prior determinations to these services is reasonable given the administrative cost to process each prior determination request.

In § 410.20(d)(3), we propose that those services for which there is a national coverage determination (NCD) in effect or a local coverage determination/local medical review policy (LCD/LMRP) in effect through the local contractor at the time of the request for prior determination will not be eligible for prior determination. This exclusion only applies when the NCD or LCD/LMRP, in CMS' judgment, provides the sufficiently specific reasonable and necessary criteria for the specific procedure for which the prior determination is requested.

Our reason for this provision is that many national and local policies already provide the information necessary to make an informed decision about whether or not the service will be covered. In establishing the prior determination procedures through our manuals, we will instruct CMS contractors that, in cases where a prior determination is requested but an NCD or LCD/LMRP exists, the contractor will send the beneficiary a copy of that policy along with the explanation of why a prior determination will not be made.

The lists will be consistent across all Medicare contractors except for the services excluded because of the presence of a local coverage determination. To ensure consistency, we will compile the list of at least 50 services with the highest allowed charges performed at least 50 times annually and the plastic and dental surgeries that Medicare may cover under some circumstances and that have an average allowed charge of at least $1,000. We will then exclude those services that have an NCD that provides the sufficiently specific reasonable and necessary criteria for that specific procedure. Each Medicare contractor will then exclude the services for which that contractor has a local policy and post the remaining services by Healthcare Common Procedure Coding System procedure code and code description on its Web site.

In § 410.20(d)(4), we propose that CMS may increase the number of services in the initial pool that are eligible for prior determination (over the minimum of 50) through manual instructions. Our reason for this provision is to ensure that CMS can provide for prior determinations for additional services when we detect a need. Sections 1869(h)(3) through (6) of the Act are specific with respect to various aspects of the prior determination process. Therefore, in § 410.20(d)(5), we specify those mandatory provisions. The detailed procedures to be followed by our contractors will be published in our manual instructions. Section 410.20(d)(5)(i) generally explains the prior determination process and accompanying documentation that may be required. Section 410.20(d)(5)(ii) describes how contractors will respond to prior determination requests. The statute provides that notice will be provided ''within the same time period as the time period applicable to the contractor providing notice of initial determinations on a claim for benefits under section 1869(a)(2)(A) of the Act.'' Therefore, the statute requires that contractors must mail the requestor the decision no later than 45 days after the request is received. Contractors will be instructed to process the requests as quickly as possible (but no longer than 45 days), taking into consideration the beneficiary's physical condition, the urgency of treatment, and the availability of the necessary documentation. We are soliciting comments on this issue.

Section 410.20(d)(5)(iii) explains the binding nature of a positive

determination. Section 410.20(d)(5)(iv) explains the limitation on further review.

III. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on the information collection requirement discussed below, which are subject to the PRA.

Section 410.20 Physicians' Services

Prior determination of medical necessity for physicians' services. Before a physician's service is furnished, an eligible requester, such as a physician or beneficiary, may request an individualized decision, a ''Prior Determination of Medical Necessity,'' by a Medicare contractor as to whether or not the physician's service is covered consistent with the requirements of section 1862(a)(1)(A) of the Act relating to medical necessity.

The burden associated with this proposed requirement would be the time spent by a requester to provide the appropriate level of documentation, as outlined in this section, to a Medicare contractor so that the contractor can provide a ''Prior Determination of Medical Necessity.''

We estimate 5000 requests will be made on an annual basis and it will require 15 minutes per request, for an annual burden of 1,250 hours.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: John Burke, CMS–6024–P, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, CMS Desk Officer, CMS–6024–P, *Christopher_Martin@omb.eop.gov*. Fax (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule. Furthermore, this rule would not result in an increase in benefit spending.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation would not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

Subpart B—Medical and Other Health Services

1. The authority citation for part 410 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 410.20 is amended by adding new paragraph (d) to read as follows:

§ 410.20 Physicians' services.

* * * * *

(d) *Prior determination of medical necessity for physicians' services.*

(1) *Definition:* A ''Prior Determination of Medical Necessity'' means an individual decision by a Medicare contractor, before a physician's service is furnished, as to whether or not the physician's service is covered consistent with the requirements of section 1862(a)(1)(A) of the Act relating to medical necessity.

(2) Each Medicare contractor will, through the procedures established in CMS manual instructions, allow requests for Prior Determinations of Medical Necessity from eligible requesters under its respective jurisdiction for those services identified by CMS and posted on that specific Medicare contractor's Web site. Only those services listed on the date the request for a prior determination is made are subject to prior determination. Each contractor's list will consist of the following:

(i) At least the 50 most expensive physicians' services listed in the national ceiling fee schedule amount of the Medicare Physician Fee Schedule Database performed at least 50 times annually minus those services excluded by paragraph (d)(3) of this section; and

(ii) Plastic and dental surgeries that may be covered by Medicare and that have an average allowed charge of at least $1,000.

(3) Within the services designated in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, those services for which there is a national coverage determination (NCD) in effect or a local coverage determination/local medical review policy (LCD/LMRP) in effect through the local contractor at the time of the request for prior determination will be excluded from the list of services eligible for prior determination. This provision only applies when, in CMS' judgment, the national or local policy provides the sufficiently specific reasonable and necessary criteria for the specific procedure for which the prior determination is requested.

(4) CMS may increase the number of services that are eligible for prior determination through manual instructions.

(5) Under section 1869(h)(3) through (6) of the Act, the procedures established in CMS manual instructions will include the following provisions:

(i) *Request for prior determination.*

(A) *In general.* An eligible requester may submit to the contractor a request for a determination, before the furnishing of a physicians' service, as to whether the physicians' service is covered under this title consistent with the applicable requirements of section 1862(a)(1)(A) of the Act (relating to medical necessity).

(B) *Accompanying documentation.* The Secretary may require that the request be accompanied by a description of the physicians' service, supporting documentation relating to the medical necessity for the physicians' service, and other appropriate documentation. In the case of a request submitted by an eligible requester who is described in section 1869(h)(1)(B)(ii) of the Act, the Secretary may require that the request also be accompanied by a copy of the advance beneficiary notice involved.

(ii) *Response to request.*

(A) *General rule.* The contractor will provide the eligible requester with notice of a determination as to whether—

(*1*) The physicians' service is so covered;

(*2*) The physicians' service is not so covered; or

(*3*) The contractor lacks sufficient information to make a coverage determination with respect to the physicians' service.

(B) *Contents of notice for certain determinations.*

(*1*) *Noncoverage.* If the contractor makes the determination described in paragraph (d)(5)(ii)(A)(*2*) of this section, the contractor will include in the notice a brief explanation of the basis for the determination, including on what national or local coverage or noncoverage determination (if any) the determination is based, and a description of any applicable rights under section 1869(a) of the Act.

(*2*) *Insufficient information.* If the contractor makes the determination described in paragraph (d)(5)(ii)(A)(*3*) of this section, the contractor will include in the notice a description of the additional information required to make the coverage determination.

(C) *Deadline to respond.* That notice will be provided within the same time period as the time period applicable to the contractor providing notice of initial determinations on a claim for benefits under section 1869(a)(2)(A) of the Act.

(D) *Informing beneficiary in case of physician request.* In the case of a request by a participating physician, the process will provide that the individual to whom the physicians' service is proposed to be furnished will be informed of any determination described in paragraph (d)(5)(ii)(A)(*2*) of this section (relating to a determination of non-coverage) and the right to obtain the physicians' service and have a claim submitted for the physicians' service.

(iii) *Binding nature of positive determination.* If the contractor makes the determination described in paragraph (d)(5)(ii)(A)(*1*) of this section, that determination will be binding on the contractor in the absence of fraud or evidence of misrepresentation of facts presented to the contractor.

(iv) *Limitation on further review.*

(A) *General rule.* Contractor determinations described in paragraph (d)(5)(ii)(A)(*2*) of this section or (d)(5)(ii)(A)(*3*) of this section (relating to pre-service claims) are not subject to further administrative appeal or judicial review.

(B) *Decision not to seek prior determination or negative determination does not impact right to obtain services, seek reimbursement, or appeal rights.* Nothing in this paragraph will be construed as affecting the right of an individual who—

(*1*) Decides not to seek a prior determination under this paragraph with respect to physicians' services; or

(*2*) Seeks such a determination and has received a determination described in paragraph (d)(5)(ii)(A)(*2*) of this section, from receiving (and submitting a claim for) those physicians' services and from obtaining administrative or judicial review respecting that claim under the other applicable provisions of this section. Failure to seek a prior determination under this paragraph with respect to physicians' services will not be taken into account in that administrative or judicial review.

(C) *No prior determination after receipt of services.* Once an individual is provided physicians' services, there will be no prior determination under this paragraph with respect to those physicians' services.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: September 29, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 23, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–17175 Filed 8–29–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AG70

Injurious Wildlife Species; Black Carp (*Mylopharyngodon piceus*); Availability of Draft Environmental Assessment and Draft Economic Analysis

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and availability of supplemental information.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of a draft environmental assessment and draft economic analysis for public comment. These documents supplement the information in the proposed rule to add all forms (diploid and triploid) of live black carp (*Mylopharyngodon piceus*), gametes, and viable eggs to the list of injurious fish, mollusks, and crustaceans under the Lacey Act. We are also soliciting public comments on all aspects of the proposed rule.

DATES: Comments must be submitted on or before October 31, 2005.

ADDRESSES: The documents are available from the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 322, Arlington, Virginia 22203; FAX (703) 358–1800. They also are available on our webpage at *http://contaminants.fws.gov/Issues/InvasiveSpecies.cfm.* Comments may be hand-delivered, mailed, or sent by fax to the address listed above. Alternatively, you may send comments by electronic mail (e-mail) to: *BlackCarp@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Erin Williams, Division of Environmental Quality, Branch of Invasive Species, at (703) 358–2034 or *erin_williams@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

In February 2000, we were petitioned to list black carp as an injurious species of wildlife under the Lacey Act (18 U.S.C. 42). We published a proposed rule in the **Federal Register** to add all forms (diploid and triploid) of live black carp to the list of injurious fish, mollusks, and crustaceans under the Lacey Act on July 30, 2002 (67 FR 49280); the comment period on the proposed rule closed on September 30, 2002. On June 4, 2003 (68 FR 33431), we reopened the comment period until August 4, 2003. We evaluated 103 comments received during the two comment periods on the proposed rule. We have also recently received new information relevant to the proposed listing from the aquaculture industry that we intend to consider during the development of the final rulemaking documents. This information can be accessed for public review using the contact information provided in the **ADDRESSES** section above. This notice announces the availability of a draft environmental assessment and draft economic analysis for the proposed rule. We are soliciting public comments on these documents as well as all other aspects of the July 30, 2002, proposed rule. We are particularly interested in comments on alternatively listing the diploid (fertile) form only, including gametes and viable eggs. A listing of the diploid (fertile) form would have the effect of prohibiting the importation of live diploid black carp, gametes, or viable eggs into the United States and prohibiting the movement of live diploid black carp, gametes, or viable eggs between States without a permit issued by the Director of the Service. A listing of all forms (diploid and triploid) would have the effect of prohibiting the importation of all live black carp, gametes, or viable eggs into the United States and prohibiting the movement of all live black carp, gametes, or viable eggs between States without a permit issued by the Director of the Service. The purpose of the draft environmental assessment is to evaluate three alternatives associated with the proposed rule to list black carp (*Mylopharyngodon piceus*) as an injurious species under the Lacey Act. The purpose of the draft economic analysis is to analyze the potential economic impact if the proposed rule were adopted as published.

Public Comments Solicited

We are soliciting substantive public comments and supporting data on the draft environmental assessment, the draft economic analysis, and the proposal to add all forms (diploid and triploid) of live black carp to the list of injurious wildlife under the Lacey Act. Additionally, we are seeking comments and supporting data on the consideration of adding only live diploid (fertile) forms of black carp to the list of injurious wildlife. Listing the diploid form only would prohibit the importation and interstate movement of diploid live black carp, and would not prohibit the importation and interstate movement of live triploid (sterile) black carp. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in our decisionmaking.

The Service solicits substantive public comment on the following issues:

1. How many black carp (diploid, triploid, or both) are currently in use in how many States? If a permit is required, please provide the number of black carp permitted for the past 15 years.
2. Are data available regarding the number of channel catfish, baitfish, or hybrid striped bass farms that use diploid, triploid, or both diploid and triploid black carp? What is the total acreage of black carp (diploid, triploid, or both) used?
3. Are data available to model the degree to which black carp are an effective biological control for snails and trematode outbreaks (*i.e.*, mortality rates, growth rates, and disease susceptibility)?
4. Are data available to estimate the cost of alternative biological and chemical methods to control snails and trematode outbreaks if diploid and triploid black carp are listed under the Lacey Act? Are data available to estimate the cost of alternative biological and chemical methods to control snails and trematode outbreaks if only diploid black carp are listed under the Lacey Act? Please provide data regarding the alternative methodologies and effectiveness and associated costs and benefits of the alternative(s) (chemical, biological, water level manipulation, or any combination of the three).
5. Are data available to estimate the costs associated with ponds that suffer light (loss of 200 pounds), moderate (loss between 200–2,000 pounds) or severe (loss over 2,000 pounds) outbreaks?
6. Are estimates available for the cost to remediate a pond that suffers light (loss of 200 pounds), moderate (loss between 200–2,000 pounds), and severe (loss over 2,000 pounds) outbreaks?
7. Are data available to estimate the rate at which trematode outbreaks occurred between the 1970s and 2005?
8. Are data available to estimate the rate at which trematode outbreaks are expected to change over the next 10 years, both with and without the use of black carp?
9. Have studies been conducted to evaluate other biological and/or chemical methods to disrupt the life cycle of parasites currently controlled using black carp?
10. Are data available to estimate the impact to catfish, baitfish, and hybrid

striped bass industries if diploid and triploid black carp are listed under the Lacey Act?

11. Are data available to estimate the impact to catfish, baitfish, and hybrid striped bass industries if only diploid black carp are listed under the Lacey Act?

12. Are data available for the retail cost of triploid animals? Are data available for the retail cost of diploid animals?

13. Are data available for the cost of restocking based on the ease of capture when ponds are seined and fish discarded as offal at catfish processing plants? What is the cost of restocking, and how does either alternative affect restocking?

14. Are data available for the costs for implementing 100% certified triploid black carp using the Coulter Counter® method? What are the protocols for sampling triploid black carp using this method? Are data available showing the effectiveness in identifying triploid black carp using the Coulter Counter® method?

15. Are data available for the costs for implementing 100% certified triploid black carp using the flow cytometry method? What are the protocols for sampling triploid black carp using this method? Are data available showing the effectiveness in identifying triploid black carp using the flow cytometry method?

16. Are there other scientifically proven methods to ensure 100% certification of triploid black carp?

17. Is information/data available on the costs of providing escape-proof containment of both triploid and diploid black carp? Movement may include transportation, wildlife, floods or other natural events.

18. Are data available on the costs to eradicate black carp individuals and/or populations or similar nonnative populations, if found?

19. Are data available on the costs of implementing native mollusk propagation, recovery, and restoration programs? Are data available on the State-listed species that would be impacted by the introduction of diploid or triploid black carp?

20. Are data available on the costs to re-establish mussel and snail populations that may have been impacted by spills (or other events) or may be impacted by black carp?

21. Are data available on the economic value of mussel shells used in the cultured pearl and jewelry industries?

Submit comments and data as identified in **ADDRESSES.** If you submit documentation by e-mail, please submit it as an ASCII file format and avoid the use of special characters and encryption. Please include ''Attn: [RIN 1018–AG70]'' in your e-mail subject line and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our office at telephone number 703–358–2148 during normal business hours. Please note that this e-mail address will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: 18 U.S.C. 42.

Dated: August 24, 2005.

Paul Hoffman,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–17173 Filed 8–29–05; 8:45 am]

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Notices

Federal Register

Vol. 70, No. 167

Tuesday, August 30, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Management Unit; El Dorado Co., CA, Douglas Co., NV, Alpine Co., CA, Heavenly Mountain Resort Master Plan Amendment, 2006

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Lake Tahoe Basin Management Unit, will prepare a Draft Environmental Impact Statement (DEIS) for the Heavenly Mountain Resort Master Plan Amendment, 2006. This update includes operational improvements for more efficient use of existing and proposed ski facilities, better skier dispersal, summer activities and lodge locations. Heavenly Mountain Resort is located within El Dorado and Alpine Co., California, and Douglas Co., Nevada, on the border between California and Nevada, adjacent to the community of Stateline. This Master Plan Amendment is submitted based on the existing 1996 Master Plan as part of Heavenly's special use permit.

DATES: Comments concerning the scope of the analysis must be received by October 3, 2005. The draft environmental impact statement is expected by December 2005 and the final environmental impact statement is expected by June 2006.

ADDRESSES: Send written comments to Janine Clayton, Acting Forest Supervisor, Lake Tahoe Basin Management Unit, 35 College Dr., South Lake Tahoe, California, 96150, email: *comments-pacificsouthwest-ltbmu@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Douglas Ridley, Interdisciplinary Team Leader, Lake Tahoe Basin Management Unit, 35 College Dr., South Lake Tahoe, CA, 96150.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Alpine skiing is the predominant land use within the Heavenly Management Area. The Master Plan Amendment, 2006 is expected to optimize the quality of skiing based upon annual assessments of the skiing experience. The Forest Plan identifies maintaining a quality ski resort as a desired future condition, thus the Master Plan Amendment, 2006 responds to changes in technology, resort ownership, market trends and user preferences.

Proposed Action

The Heavenly Master Plan Amendment, 2006 is intended to update the existing 1996 Heavenly Ski Resort Master Plan in order to incorporate recommendations from comprehensive studies regarding lift technology, mountain utilization and lodge locations. The DEIS will tier where appropriate from the adopted 1996 Heavenly Ski Resort EIS/EIR. The Master Plan provides for more efficient use of ski facilities and summer activities, a better balance of skiers/riders between lifts and trails, and improvement of facilities within the existing, developed ski area to maximize guest safety and experience.

Possible Alternatives

Alternative 1 is a No Action/No Project alternative. All future development would adhere to projects listed in the existing approved master plan and be subject to all mitigation measures, project limitations and timelines described therein. Alternative 2 is the Proposed Action and is based on updating the 1996 Heavenly Ski Resort Master Plan. The goal is improvement rather than expansion of resort lift technology, facilities and recreation activities. Additional alternatives may differ from the Proposed Action with possible revisions to the North Bowl Express alignment, ski trail design, snowmaking, and relocation of facilities and roads.

Lead and Cooperating Agencies

The USDA Forest Service, Lake Tahoe Basin Management Unit will serve as the lead federal agency. It will produce an Environmental Impact Statement (EIS) that satisfies the requirements of the National Environmental Policy Act (NEPA) and the Tahoe Regional Planning Agency (TRPA). The TRPA is the lead agency under the Tahoe Regional Planning Compact and will serve as the lead agency for a TRPA EIS. El Dorado County, California will serve as the lead agency for preparation of an Environmental Impact Report (EIR) under the California Environmental quality Act (CEQA). The intention is to produce a joint document meeting the requirements of NEPA, TRPA and CEQA.

Responsible Official

The responsible official is Janine Clayton, Acting Forest Supervisor, Lake Tahoe Basin Management Unit, 35 College Dr., South Lake Tahoe, California, 96150.

Nature of Decision To Be Made

The Forest Service expects that a DEIS will be filed and made available to the public and other commenting entities in December, 2005. Following public comment, a Final Environmental Impact Statement (FEIS) is scheduled to be issued in June 2006 by the Forest Service. The LTBMU expects an insignificant amendment to the Forest Plan.

Scoping Process

A public scoping meeting will be held on Wednesday, September 21 at 7 p.m. at the Lake Tahoe Basin Management Unit's Forest Supervisor's office, 35 College Drive, South Lake Tahoe, California. Scoping will occur on September 14 at the TRPA Advisory Planning Commission meeting at the TRPA Governing Board Rooms, 128 Market Street, Stateline, NV. Scoping will continue at the September 28 TRPA Governing Board meeting at the North Tahoe conference center, 8381 North Lake Blvd., Kings Beach, CA.

Preliminary Issues

During preparation of the Master Plan Amendment 2005 Environmental Assessment, the following issues were identified: The need to prepare a project-level biological evaluation to analyze old growth and wildlife habitat; scenic quality, and project implementation in a stream environment zone. Due to the significance of these issues, it was decided to complete an EIS and not issue a decision under the EA.

Permits or Licenses Required

The TRPA will issue project specific permits for projects and activities within the Lake Tahoe Region, as approved under the Heavenly Mountain Resort Master Plan Amendment.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 23, 2005.

Tyrone Kelley,

Deputy Forest Supervisor, LTBMU.

[FR Doc. 05–17154 Filed 8–29–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; and Grand Mesa, Uncompahgre, and Gunnison National Forests; Bull Mountain Natural Gas Pipeline

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent (NOI) to conduct scoping and prepare an Environmental Impact Statement (EIS) for the Bull Mountain Natural Gas Pipeline Project, Delta, Garfield, Gunnison, and Mesa Counties, Colorado.

SUMMARY: SG Interests I, LTD (SGI) of Houston, Texas, has submitted to the White River National Forest, the Grand Mesa, Uncompahgre and Gunnison National Forests, and the Bureau of Land Management (BLM) Glenwood Springs Field Office, a proposal to authorize SGI to construct, operate and maintain a 20-inch pipeline system to transport natural gas from production operations in the Bull Mountain Unit, 21 miles northeast of Paonia, CO, to the existing Divide Creek pipeline system, 10 miles south of Silt, CO, for delivery into interstate natural gas pipeline systems. The proposed pipeline crosses portions of Gunnison, Delta, Mesa, and Garfield Counties, CO. In addition to the natural gas pipeline, an 8-inch water pipeline would be installed in the same trench during the construction operations. The water pipeline would transport produced water from well drilling activities to a commercially available disposal facility at the north end of the pipeline. SGI has submitted a right-of-way application and temporary use are application to the Glenwood Springs Field Office of the BLM, which is the authorizing agency for natural gas pipelines under the Mineral Leasing Act where the lands are managed by two or more Federal agencies.

Total length of the proposed pipeline is approximately 252.5 miles, starting on private land located in Section 10, T11S, R90W, 21 miles northeast of Paonia, CO, and traversing north approximately 8.2 miles on the Grad Mesa, Uncompahgre and Gunnison National Forests to the White River National Forest boundary. It then continues north for 8.1 miles in the White River National Forest-Rifle Ranger District. From the White River National Forest, it traverses approximately 3.5 miles of BLM, and then crosses onto private lands at Section 5, T8S, R91W (5.6 miles total on private land for entire length), and connects the existing Divide Creek pipeline located in Section 1, T8S, R92W. The proposed pipeline route starts in Gunnison County on the south end, and crosses north through portions of Delta, and Mesa Counties, and ending at the Divide Creek Compressor Station in Section 1, T8S, R92W, Garfield County, CO. The proposed pipeline route follows existing pipeline routes for approximately 44% of the entire length across all land ownerships. On National Forest lands, the proposed pipeline route follows existing pipeline routes for approximately 57% of the total proposed route on National Forest lands. The proposed pipeline deviates from existing pipeline routes for engineering constructability issues or to avoid private land where there have been landowner objections.

In addition to the pipeline proposals, the proposal action includes proposals by the White River National Forest and the Grand Mesa, Uncompahgre and Gunnison National Forests to change the area within and adjacent to the proposed pipeline right-of-way to a ''Utility Corridor'' management prescription. This would require a Forest Plan amendment for each Forest. These Forest Plan amendments would be considered *non-significant* per Forest Service Manual (FSM) 1922.51–2. ''Adjustments of management area boundaries or management prescriptions [that] do not cause significant changes in multiple use goals and objectives for long-term land and resource management.'' The Plan amendments would place the lands in the appropriate management prescription for utility corridors. This management prescription describes the desired condition, and contains standards and guidelines that are appropriate for utility corridors. The proposed utility corridor management

area designation may be from 8–12 miles in length on each Forest, depending on the analysis.

DATES: Comments concerning the proposal and the scope of the analysis will be accepted and considered at any time after publication of this notice in the **Federal Register** and prior to a decision being made. To be most helpful in the design of the proposed action, development of any alternatives, project design features, mitigation measures, and the subsequent environmental analysis, comments should be received within 45 days of publication of this NOI in the **Federal Register**. A scoping notice will also be distributed by mail to a project mailing list on, or about, the date that this notice is published in the **Federal Register**. Public meetings will be announced through local news media sources such as the Glenwood Springs Post Independent, Grand Junction Daily Sentinel, Delta County Independent, and the Rifle Citizen Telegram. Detailed information about the proposed action, including maps and pending public meetings will also be posted on the White River National Forest Web site at: *http://www.fs.fed.us/r2/whiteriver.* Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. An electronic e-mail address for comments is available at: *comments-rocky-mountain-white-river@fs.fed.us*. Please include the project name in the subject line of your e-mail comments.

A draft EIS (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review during March, 2006. When a DEIS is available, the EPA will publish a Notice of Availability (NOA) in the **Federal Register**. The comment period on the DEIS will be for a period of not less than 45 days from the date the EPA publishes the NOA in the **Federal Register**. The final EIS is expected to be available in August, 2006.

ADDRESSES: Comments submitted in writing should be mailed to: District Ranger, White River National Forest, Rifle Ranger District, 0094 County Road 244, Rifle, Colorado, 81650.

In addition, e-mail comments can be submitted to *comments-rocky-mountain-white-river@fs.fed.us.* Please include the project name in the subject line of your e-mail. Comments should include: (1) Name, address, telephone number, organization represented, if any; (2) title of the document on which the comment is being submitted; and (3) specific facts and supporting reasons for the Responsible Official to consider.

FOR FURTHER INFORMATION CONTACT: Julie Grode, Project Manager, GMUG NF, Grand Valley Ranger District, 2777 Crossroads Blvd., Unit 1, Grand Junction, Colorado, 81506. Telephone 970–263–5828, or Fax 970–263–5819. Telephone for the Hearing Impaired is 970–945–3255. In addition, information about the proposal, including details of the proposed action and maps, will be posted on the White River National Forest Web site at: *www.fs.fed.us/r2/whiteriver.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need of this action is to authorize SG Interests I, LTD to construct, operate and maintain a 20-inch natural gas pipeline and an 8-inch water pipeline on National Forest System and Bureau of Land Management lands. The need for the construction of the Bull Mountain Pipeline is to transport natural gas from production operations in the Bull Mountain Gas Leasing Unit for delivery into interstate natural gas pipeline systems, in order to provide energy resources to the national energy market. The ''Greasewood Hub'', near Meeker, Colorado is the interstate system to which the natural gas from the Bull Mountain Pipeline would be delivered. The existing 6-inch Ragged Mountain Pipeline (RMP), which is near the Bull Mountain production area, does not have the capacity to transport anticipated natural gas production from the Bull Mountain Unit and adjacent gas leasing units.

A secondary action is proposed by the White River National Forest and the Grand Mesa, Uncompahgre, Gunnison National Forests to create amendments to their respective Forest Plans. The amendments would change the current management prescriptions in a corridor along and adjacent to the final route of the proposed pipeline, if authorized by the BLM, to a ''Utility Corridor'' management prescription. The purpose and need to change the Forest Plan management prescriptions along the pipeline corridor is to allow for primary management goals in each Forest Plan to be consistent with future on-the-ground management within the utility corridor.

Proposed Action

Total proposed pipeline system length is approximately 25.5 miles. A 4-acre compressor station site would be located on the southern end of the project on private lands and this proposal will be considered a connected action for this analysis. The proposed action maximizes use of existing pipeline and roadway corridors for new construction, existing transportation to interstate pipelines, and has been designed with capacity allowances to meet foreseeable production increases. The proposed pipeline route follows existing pipeline routes for approximately 44% of the entire length across all land ownerships. On federal lands, the proposed pipeline route follows existing pipeline routes for approximately 57% of the total proposed route. In addition to the 20-inch natural gas pipeline, an 8-inch water pipeline will be installed in the same ditch during the construction operations. The water pipeline would transport produced water to a commercially available disposal facility at the north end of the project, as a disposal facility is not available in the Bull Mountain Unit area. The 20-inch and 8-inch pipeline and related facilities will be designed to Department of Transportation (DOT) CFR 39 part 192 standards and American National Standards Institute (ANSI) Class 600 specification with launchers and receivers for pigging. Pipeline burial depths will be 36 inches below grade in normal soil, 48 inches below grade across streams, or 18 inches below grade in solid rock. Additional depth requirements will be viewed on a case by case basis. Variable width temporary use areas (TUA) are requested to accommodate construction. A temporary right-of-way of 75 feet would be used during the construction, with some additional Temporary Use Areas for vehicle and equipment parking and vehicle turn-a-rounds. A permanent right-of-way of 50-feet would be granted if the proposal is approved. Construction operations would include clearing of up to 100 foot corridor of vegetation, in most cases 75 feet, moving in heavy equipment and the 20″ and 8″ pipe sections, digging trench for pipeline up to 48″ deep, revegetation and reclamation of disturbed areas after pipeline construction. An approximate 10–12 feet wide corridor of non-forested (grassland and shrub) habitat would be maintained for the lifetime of the pipeline permit. The remainder of the cleared 50-foot permanent corridor would be allowed to revegetate to a forested condition, in suitable habitats. Noxious weeds would be monitored and treated by the proponent (SGI) for the lifetime of the pipeline permit.

Total acres impacted, including temporary use areas, during the construction activities would be approximately 295 acres. The permanent 50-foot right-of-way would

include approximately 155 acres for the length of the pipeline.

The proposed Bull Mountain pipeline interconnects to the existing 14-inch pipeline at the Divide Creek Compressor Station in Section 1, T8S, R92W, Garfield County, CO. There would be a metering and pigging facility at this proposed interconnect site, and one main line block valve along the route. The proposed pipeline is designed to adequately transport a wide variety of gas volumes to meet presently foreseeable production levels.

The pipeline project crosses T11S, R90W Sections 3, 4 & 10; T10S, R90W Sections 18, 19, 30, 31, 32 & 33; T10S, R91W, Sections 2, 11, 12, & 13; T9S, R91W, Sections 3, 10, 11, 14, 23, 26 & 35; T8S, R91W, Sections 5, 6, 8, 17, 20, 21, 28, 33 & 34; and T8S, R92W, Section 1, within Gunnison, Delta, Mesa, and Garfield Counties, CO. This route starts from a proposed compressor station on private land located in Section 10, T11S, R90W, runs north to intersect the Ragged Mountain Pipeline (RMP) pipeline in Section 33, T10S, R90W (half way between Fed 10–90–32 and Fed 10–90–33 Well locations) and then intersects the RMP pipeline again in between Sections 29 & 32, T10S, R90W. From this point, the route parallels existing pipeline corridors including the Ragged Mountain Pipeline (RMP), Rocky Mountain Natural Gas (RMNG), and Divide Creek Pipeline to the maximum extent possible to make use of the previously cleared corridor areas for construction.

The pipeline route separates from the RMP pipeline to avoid a private property located in Sections 10, 11, 14, T9S, R91W but rejoins it after bypassing that property. The pipeline route then intersects the RMNG 6-inch pipeline located in Section 3, T9S, R91W and parallels this existing pipeline corridor until its separates in Section 33, T8S, R91W. It traverses north on White River National Forest until it moves onto BLM land, following approximately the western boundary between BLM and private lands. The pipeline route heads westerly and crosses onto private lands at Sections 5, 6, T8S, R91W, and connects to the 14-inch Divide Creek Pipeline located in Section 1, T8S, R92W.

The proposed pipeline route passes through a total of 9.2 miles of Inventoried Roadless Areas (IRAs) on National Forest Lands. Approximately 6.7 miles of the 9.2 miles of the proposed pipeline route within National Forest IRAs follow an existing pipeline route constructed in 1982. Specifically, the proposed pipeline route traverses through approximately 6.0 miles on the Grand Mesa, Uncompahgre and Gunnison National Forests Clear Creek Roadless Area #186, 1.4 miles of the White River National Forest Baldy Mountain Roadless Area #67, 1.7 miles of the White River National Forest East Willow Roadless Area #73, and 0.1 mile of the White River National Forest Reno Mountain Roadless Area #66. Total acres impacted by construction activities (including temporary use areas) in inventoried roadless areas on National Forest Lands would be approximately 115 acres. The permanent 50-foot right-of-way for the pipeline would involve approximately 56 acres of inventoried roadless areas.

In addition to the pipeline construction and right-of-way proposals, the proposed action includes proposals by the White River National Forest and the Grand Mesa, Uncompahgre and Gunnison National Forests to change the area following the selected or authorized pipeline route to a ''Utility Corridor'' management prescription. A ''Utility Corridor'' is defined in the White River National Forest Plan as a ''linear strip of land defined for the present or future location of transportation or utility facilities within its boundaries.'' This designation of a utility corridor would require a Forest Plan amendment for each Forest, which would be considered *non-significant* amendments according to FSM 1922.51–2. ''Adjustments of management area boundaries or management prescriptions [that] do not cause significant changes in multiple use goals and objectives for long-term land and resource management.'' These Plan amendments would place the land in the appropriate management prescription for utility corridors. This prescription describes the desired condition, and contains standards and guidelines that are appropriate for utility corridors. The actual width of the utility corridor would be determined during the analysis process. The proposed utility corridor management area designation on White River National Forest is 8.15 miles in length and 8.23 miles on the Grand Mesa, Uncompahgre and Gunnison National Forests. The White River National Forest would change the management area prescription for the proposed pipeline right-of-way from the existing prescription of #5.43-Elk Habitat, and #5.41-Deer and Elk Winter Range, to a management prescription of #8.32-Designated Utility Corridor. The Grand Mesa, Uncompahgre and Gunnison National Forests would change the management area prescription for the proposed pipeline right-of-way from the existing prescription of #6B-Livestock Grazing, to a management prescription of #1D-Utility Corridor.

The proposal for the pipeline construction and right-of-way is not contingent upon Forest Plan amendments by the White River National Forest or the Grand Mesa, Uncompahgre and Gunnison National Forests.

Connected Actions

A 4-acre compressor site for the Bull Mountain pipeline is planned to be located on private land on the southern end of the pipeline. Stringent noise abatement structures and techniques would be employed, per agreement with the landowner.

The Henderson lateral pipeline is another pipeline proposed by SGI Interests to transport existing gas production in the Bull Mountain unit 1.7 miles to the Ragged Mountain Gas Gathering System pipeline. This proposal consists of a 6-inch and a 24-inch natural gas steel pipeline to transport natural gas from production operations in the Bull Mountain Unit Area and a 6-inch high density polyethylene (HDPE) to transport produced water from drilling activities. The 24-inch pipeline may also be used as the future suction line from the Bull Mountain Gathering System to feed the proposed Bull Mountain Pipeline. The 6-inch steel pipeline length is approximately 1.2 miles. Total 24-inch steel pipeline length is approximately 0.5 mile. Total 6-inch HDPE pipeline length is approximately 1.7 miles. An environmental analysis is on-going for this project by the Grand Mesa, Uncompahgre, and Gunnison National Forests.

Preliminary Issues

Preliminary issues identified so far include: (1) Impacts of pipeline construction and operation on scenic qualities and roadless character; (2) impacts of vegetation removal causing erosion and additional sediment loads into streams; (3) geologic hazards and unstable soils affecting the stability of the pipeline; (4) noxious weed increases from ground disturbance, imported equipment use and imported materials such as road gravel, seed mixes, and erosion control materials; (5) impacts on existing Forest System roads and increased traffic affecting recreational users during construction; (6) impacts on shallow groundwater resources and springs from pipeline constructions; (7) impacts on existing mineral lease holders and existing natural gas operations, and (8) impacts on streams and wetlands from pipeline

construction, road use, and pipeline stream crossings.

The proposal and detailed proposed action is being developed with environmental concerns in mind. Detailed project design criteria and mitigation measures to reduce environmental impacts will be developed and adopted as part of the proposed action and will be listed in the DEIS.

Possible Alternatives

No other alternatives are currently proposed. Several ''route options'' were considered in the development of the current proposed pipeline route by SGI; however, those options were not incorporated into the proposed route due to constructability and engineering issues and/or due to private landowner refusal to allow access. One or more alternatives to the proposed action may be analyzed for the DEIS, based on issues determined through public scoping.

Lead and Cooperating Agencies

The Forest Service is the lead agency for the NRPA analysis. The BLM will participate as a cooperating agency. The BLM has the authority to authorize a right-of-way for natural gas pipelines under the Mineral Leasing Act, with Forest Service concurrence, when portions of the pipeline are on NFS lands. However, the White River National Forest has prepared a Memorandum of Understanding (MOU) taking on the lead role for the NEPA analysis for the Bull Mountain pipeline project, with the Grand Mesa, Uncompahgre, Gunnison National Forests and the BLM as cooperating agencies.

Responsible Officials

The Responsible Official for making a decision on this proposal for approving a pipeline right-of-way is Jamie Connell, Field Office Manager, Glenwood Springs Field Office of the BLM. The Responsible Official for making a decision on the proposed amendment to the Grand Mesa, Uncompahgre and Gunnison National Forests Land and Resource Management Plan is Charles Richmond, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests. The Responsible Official for making a decision on the proposed amendment to the White River National Forest Land and Resource Management Plan is Maribeth Gustafson, Forest Supervisor, White River National Forest. The lead Line Officer for this NEPA analysis is the District Ranger on the Rifle Ranger District, White River National Forest.

Nature of Decisions To Be Made

The decisions to be made are (1) to authorize the right-of-way as proposed by SGI or an alternative; and (2) whether or not to approve Forest Plan amendments for the White River National Forest and the Grand Mesa, Uncompahgre and Gunnison National Forests to change the management area direction for the pipeline right-of-way to a management prescription of a utility corridor. The decision to construct the pipeline construction and permit a right-of-way is not contingent upon Forest Plan amendments to designate the pipeline route as a utility corridor by either the White River National Forest or the Grand Mesa, Uncompahgre and Gunnison National Forests.

Permits or Licenses Required

Additional permits or licenses, which may be required in addition to Forest Service authorizations, include a Stormwater Management Plan and a Department of the Army, Corps of Engineers Clean Water Act Section 404 permit. A complete list of local and federal permits required is available upon request. An operation and monitoring plan will be required from the proponent, which will be approved by the Forest Service and the BLM. Some mitigation measures may be added to the decision for public safety during construction operations.

Early Notice of Importance of Public Participation

The comment period on the draft environmental impact statement will not be less than 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 24, 2005.

Don Carroll,

Acting Forest Supervisor, White River National Forest.

[FR Doc. 05–17179 Filed 8–29–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Privacy Act of 1974; Systems of Records

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: NRCS is revising the System of Records from 1994.

SUMMARY: Publication of the NRCS revision to the System of Records to reflect an Agency reorganization changing the name of the Soil Conservation Service to the Natural Resources Conservation Service, to change the system name to reflect categories of files contained in the system, to add a routine use to allow records to be accessed by technical service providers and contractors, and to update authorities, agency contact

information, system accessibility, file maintenance, storage, and retrieval.

EFFECTIVE DATES: August 30, 2005.

FOR FURTHER INFORMATION, CONTACT: Edward M. Biggers, Jr., Director, Management Services Division, 1400 Independence Avenue SW., Room 6136–S, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: Section 2701 of the 2002 Farm Bill amended Section 1242 of the Food Security Act to require the Secretary of Agriculture to provide technical assistance for conservation programs authorized under Title XII of the Food Security Act to an agricultural producer eligible for that assistance ''directly * * * or at the option of the producer, through a payment * * * to the producer for an approved third party, if available.'' The Secretary of Agriculture delegated authority to implement Section 1242 to NRCS.

Amended Section 1242 of the Food Security Act greatly expands the availability of technical assistance to landowners, operators, producers, cooperators, or participants by allowing non-USDA providers of technical assistance to assist in the delivery of technical services. In order to provide technical assistance for Title XII programs, third party providers of technical services must be able to access landowner, operator, producer, cooperator, or participant information.

This Notice of Revision to Privacy Act System of Record, by adding a new routine use (7) to the NRCS System of Records (see attachment), allows disclosure to contractors and technical service providers for the purpose of providing technical services to a landowner, operator, producer, cooperator, or participant.

Summary of Changes

As published, the current system of records contains information that is in need of updating.

System Name: The name of the system is changed from ''Program Cooperators—Soil Conservation Service, USDA/SCS'' to ''Landowner, Operator, Producer, Cooperator, or Participant Files—Natural Resources Conservation Service, USDA/NRCS.''

System Location: System location is changed by updating the name of the system and adding an Internet address and data center information.

Categories of Individuals Covered by the System: Categories of individuals covered by the System is changed by adding categories of individuals covered by the system.

Categories of Records in the System: Categories of Records in the System is changed by adding categories of records covered by the system.

Authority for Maintenance of the System: Authority for maintenance of the system is changed from ''16 U.S.C. 590 a–f, q, q–1 and 42 U.S.C. 3271–3274'' to ''16 U.S.C. 590 a–f, q, q–1 and other applicable authorities.''

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses: This section was changed by adding a new Routing Use, #7, which states, ''[d]isclosure may be made to contractors or to technical service providers as necessary to provide technical services to NRCS landowners, operators, producers, cooperators, and participants and such disclosure shall be made subject to the purposes for which the contractor or technical service provider is hired.''

Storage: Storage is changed by updating the methods by which records are stored.

Retrievability: Retrievability is changed by updating the methods by which records are retrieved.

Safeguards: Safeguards is changed by updating the name of the Agency and how files are maintained, and by adding system access and authorization.

Retention and Disposal: Retention and disposal is changed by updating the categories of individuals covered by the system.

System Manager(s) and Address: System manager(s) and address is changed by adding an Internet address and updating the Agency name.

Notification Procedure: Notification procedure is changed by updating how individuals may request information regarding the system.

Record Access Procedures: Record access procedures are changed by updating how individuals may obtain procedures for gaining access to a record in the system.

Contesting Record Procedures: Contesting record procedures are changed by updating how individuals may obtain procedures for contesting a record in the system.

Record Source Categories: Record source categories are changed by updating the categories of individuals covered by the system and the Agency name.

Signed in Washington, DC on August 24, 2005.

Mike Johanns,

Secretary.

Department of Agriculture/Natural Resources Conservation Service—1

SYSTEM NAME:

Landowner, Operator, Producer, Cooperator, or Participant Files—Natural Resources Conservation Service, USDA

SYSTEM LOCATION:

Program landowner, operator, producer, cooperator, or participant files are maintained in all NRCS county field delivery locations, mostly USDA Field Service Centers in the county seat. Addresses of each field office are listed in the local telephone directories of the field office locations under the heading, ''United States Government, Department of Agriculture, Natural Resources Conservation Service.'' Addresses may also be obtained at *http://www.nrcs.usda.gov.* Program landowner, operator, producer, cooperator, or participant files are also maintained in USDA data centers at Fort Collins, Colorado; Kansas City, Missouri, St. Louis, Missouri, and other authorized secure data centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Landowners, operators, producers, cooperators, or participants with NRCS programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of electronic databases and file folders containing information on an individual's conservation plans, cost-share agreements, conservation practice designs, hardcopy and electronic resource and planning maps, resource inventory data, assistance notes, personal and economic data, and other material necessary to provide assistance to the landowner, operator, producer, cooperator, or participant in conserving natural resources on their land they manage.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 590 a–f, q, q–1 and other applicable authorities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records may be disclosed to cooperating Federal, State, and local agencies, as necessary for implementation of conservation programs.

(2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(3) Disclosure to Federal, State, and local agencies, when necessary to certify that a conservation plan is in effect for land users to qualify for other USDA program benefits.

(4) Referral to the Department of Justice with (a) the Agency, or any

component thereof; or (b) any employee of the Agency in his/her official capacity; or (c) any employee of the Agency in his/her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a part to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the Agency to be relevant and necessary to the litigation, provided, however, that in each case, the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(5) Disclosure in a proceeding before a court or adjudicative body before which the Agency is authorized to appear, when (a) the Agency, or any component thereof; or (b) any employee of the Agency in his/her official capacity; or (c) any employee of the Agency in his/her individual capacity where the Agency has agreed to represent the employee; or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a part to litigation or has an interest in such litigation, and the Agency determines that use of such records if relevant and necessary to the litigation, provided, however, that in each case, the Agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(6) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

(7) Disclosure may be made to contractors or to technical service providers as necessary to provide NRCS technical services to landowners, operators, producers, cooperators, and participants and such disclosure shall be made subject to the purposes for which the contractor or technical service provider is hired.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an electronic retrieval system and in file folders in county field delivery offices.

RETRIEVABILITY:

Records are retrieved by name of landowner, operator, producer, cooperator, or participant, or location on a map, unit identification number, location code, farm type, soil resources survey area, soil resources conservation district code, resource management systems and practices, and program contract information.

SAFEGUARDS:

System access is restricted to authorized Natural Resources Conservation Service employees and conservation district employees and technical service providers working to assist with the implementation of natural resources programs. NRCS field employees are authorized to access system records of landowners, operators, producers, cooperator, or participants in their service area or outside of their service area if the landowner, operator, producer, cooperator, or participant has authorized access. Conservation district employees are authorized to access system records of their district landowners, operators, producers, cooperators, or participants only in their official capacity as district employees.

The electronic data retrieval system is secured by the USDA Common Computing Environment user authentication process and USDA eAuthentication login and password protection. Hardcopy files are maintained in file cabinets, which should be locked when not in use. Offices are locked during non-business hours.

RETENTION AND DISPOSAL:

Records are maintained as long as the landowner, operator, producer, cooperator, or participant qualifies for conservation programs.

SYSTEM MANAGER(S) AND ADDRESS:

District conservationists or their designees are in charge of delivering services in county offices. Addresses of each field office are listed in the telephone directories of the field office locations under ''United States Government, Department of Agriculture, Natural Resources Conservation Service.'' Addresses may also be obtained at *http://www.nrcs.usda.gov.*

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him/her by contacting the respective district conservationist or other designee. If the specific location of the record is not known, the individual should address his/her request to the Director, Management Services Division, USDA-Natural Resources Conservation Service, P. O. Box 2890, Washington, DC 20013, who will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and other relevant information (*e.g.*, name or nature of program, name of cooperating body, etc.).

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him/her by submitting a written request to the district conservationist or his/her designated representative or to the Director, Management Services Division, USDA-Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for contesting a record in the system which pertains to him/her by submitting a written request to the district conservationist or his/her designated representative or to the Director, Management Services Division, USDA-Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

RECORD SOURCE CATEGORIES:

Information in this system comes from landowners, operators, producers, cooperators, or participants and NRCS field conservationists who provide technical and program assistance to them.

[FR Doc. 05–17305 Filed 8–29–05; 8:45 am]
BILLING CODE 3410–16–U

CIVIL RIGHTS COMMISSION

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Florida Advisory Committee will convene at 2 p.m. (EST) and adjourn at 3 p.m. (EST) on Thursday, September 8, 2005. The purpose of the meeting is to

discuss the Committee's work on two projects: Equal Education Resources for Migrant Children in Florida and Unitary Status of School Districts in Florida.

This conference call is available to the public through the following call-in number: 800–473–8693, conference contact name Peter Minarik. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name, Peter Minarik.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Peter Minarik, Regional Director, Southern Regional Office, (404) 562–7000 (TDD/TTY 404–562–7004), by Tuesday, September 6, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 18, 2005.

Ivy Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–17152 Filed 8–29–05; 8:45 am]

BILLING CODE 6335–01–P

CIVIL RIGHTS COMMISSION

Agenda and Notice of Public Meeting of the Georgia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Georgia Advisory Committee will convene at 10 a.m. (EST) and adjourn at 11 a.m. (EST) on Friday, September 9, 2005. The purpose of the meeting is to discuss the Committee's work on its project, Unitary Status of School Districts in Georgia.

This conference call is available to the public through the following call-in number: 1–800–497–7708, conference contact name Peter Minarik. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name, Peter Minarik.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Peter Minarik, Regional Director, Southern Regional Office, (404) 562–7000 (TDD/TTY 404–562–7004), by Tuesday, September 6, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 18, 2005.

Ivy Davis,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 05–17153 Filed 8–29–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1408

Expansion Of Foreign–Trade Zone 8, Toledo, Ohio, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Toledo–Lucas County Port Authority, grantee of Foreign–Trade Zone 8, submitted an application to the Board for authority to expand FTZ 8 to include a site (Site 6 - 86 acres) at the Greenbelt Development Park located in Toledo, Ohio, within the Toledo/Sandusky Customs port of entry (FTZ Docket 43–2004; filed 9/20/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 57263, 9/24/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 8 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to an initial five–year time limit (to August 31, 2010) with extension available upon review.

Signed at Washington, DC, this 23rd day of August 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–17228 Filed 8–29–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 42–2005)

Foreign–Trade Zone 204, Tri–Cities Area, TN/VA, Request for Manufacturing Authority (Fractional Horsepower Electric Motors)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Tri–Cities Airport Commission, grantee of FTZ 204, requesting authority on behalf of Electro Motor, LLC for the manufacture of fractional horsepower electric motors under FTZ procedures within Site 5 of FTZ 204 in Piney Flats, Tennessee. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 19, 2005.

Electro Motor operates a manufacturing facility (23 employees) within Site 5 of FTZ 204 for the manufacture of fractional horsepower electric motors, with a capacity of 800,000 motors annually. The company's application indicates that the finished products would enter the United States at a duty rate of 3.3 percent ad valorem. Imported inputs are projected to comprise approximately 50 percent of the value of finished products produced under FTZ procedures. Electro Motor indicates that the foreign inputs that may be admitted under FTZ procedures are unwound motor assemblies (HTSUS category 8501.32) and motor parts (8503.00). Duty rates on the proposed imported components currently range from 2.4 to 6.5 percent.

This application requests authority to allow Electro Motor to conduct the activity under FTZ procedures, which would exempt the company from

Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished products for the foreign components noted above. The application also indicates that the company will derive savings from deferral of duty on imported components used in production of the finished products, simplification and expediting of the company's import and export procedures, and duty savings on scrap/waste. Electro Motor's application indicates that the above–cited savings from zone procedures could help improve the company's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign- Trade–Zones Board, U.S. Department of Commerce, Franklin Court Building--Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB--Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is October 31, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period to November 14, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the first address listed above, and at Tri–City Regional Airport, Room 306, State Highway 75, Blountville, TN 37617.

Dated: August 22, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–17230 Filed 8–29–05; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–827)

Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and section 351.216(b) of the Department of Commerce's (the Department) regulations, M.A. Notch Corporation (Notch) filed a request asking that the Department exclude from the antidumping duty (AD) order on certain cased pencils from the People's Republic of China (PRC) a large novelty pencil, which is described below. Domestic interested parties who have been active participants in recent administrative reviews of this order[1] have affirmatively expressed a lack of interest in the continuation of the order with respect to this product. In response to the request, the Department is initiating a changed circumstances review of the AD order on certain cased pencils from the PRC.

EFFECTIVE DATE: August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S.Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2005, Notch, a U.S. importer, filed a request asking the Department to exclude a large novelty pencil from the AD order on certain cased pencils from the PRC. *See* Notch's letter to the Secretary, dated April 5, 2005 (Notch Request Letter). Specifically, Notch requests that the Department exclude from the AD order imports of certain cased pencils meeting the following description: novelty jumbo pencil that is octagonal in shape, approximately ten inches long, one inch in diameter, and three–and-one eighth inches in circumference, composed of turned wood encasing one–and-one half inches of sharpened lead on one end and a rubber eraser on the other end. *See* Notch Request Letter at 1.

On May 6, 2005, Sanford *et al* submitted a letter to the Department stating that they '' . . . do not object to exclusion of items meeting the description set forth in the quoted description'' (as stated above).

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are classified under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Prior Changed Circumstance Rulings

The Department has published the final results of the following changed circumstances reviews to date:

(1) On November 4, 2003, the Department published the final results of a changed circumstances review that excluded from the scope of the order pencils with all of the following physical characteristics: length: 1) 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of

[1] Sanford Corporation, Musgrave Pencil Company, Rose Moon, Inc., and General Pencil Company (collectively, Sanford *et al*), domestic manufacturers of cased pencils, have. See, *e.g.*, *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42301 (July 22, 2005) and *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29266 (May 21, 2004).

the length of the pencil. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 62428 (November 4, 2003).

(2) On March 27, 2003, the Department published the final results of a changed circumstances review that excluded from the scope of the order pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China*, 68 FR 14942 (March 27, 2003).

Initiation of Changed Circumstances Review:

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an AD duty order which shows changed circumstances sufficient to warrant a review of the order. On April 14, 2005, Notch requested a ruling from the Department in accordance with 19 CFR 351.216(b) to exclude the novelty jumbo pencil described above from the AD order. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b), we are initiating a changed circumstances administrative review. Although Sanford et al expressed a lack of interest in the order with respect to the large novelty pencil in question, they did not claim that they represent substantially all of the production of the domestic like product, nor has the Department made such a determination. Therefore, the Department is not at this time preliminarily revoking the AD order with respect to the product in question pursuant to 19 CFR 351.222(g)(I). Interested parties are invited to comment on this initiation, or to demonstrate that the domestic interested parties account for substantially all of the production of the domestic like product.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is published in accordance with section 751(b)(1) of the Act.

Dated: August 22, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4728 Filed 8–29–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–827)

Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce published the final results and partial rescission of the administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China covering the period of review (POR) December 1, 2002, through November 30, 2003, on July 22, 2005. *See Certain Cased Pencils From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42301 (July 22, 2005) (Final Results). We are amending our final results to correct ministerial errors alleged by China First Pencil Co., Ltd./ Shanghai Three Star Stationery Industry Corp. (CFP/Three Star) and Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC) pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Erin Begnal, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–1442, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as noted below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length: not more than 15 percent of the length of the pencil.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Amended Final Results

In accordance with section 751(a) the Act, on July 22, 2005, the Department published its final results and partial rescission of the administrative review of certain cased pencils from the People's Republic of China. *See Final Results*.

On July 20, 2005, CFP/Three Star and SFTC submitted ministerial error allegations with respect to the final results of administrative review. No other interested party submitted ministerial error allegations. No party submitted comments on the ministerial error allegations submitted by CFP/ Three Star and SFTC. In accordance with section 751(h) of the Act, we have determined that certain ministerial errors were made in the calculation of the final margins for CFP/Three Star and SFTC. *See* Memorandum from Charles Riggle, Program Manager, AD/CVD Operations, Office 8, to Wendy J. Frankel, Director, AD/CVD Operations, Office 8: Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China, Re: Allegation of Ministerial Errors (August 19, 2005). Pursuant to section 751(h) of the Act, we have corrected the errors and are amending the final results of review accordingly.

See Memorandum from Paul Stolz and Erin Begnal, Case Analysts through Charles Riggle, Program Manager, to the File, Analysis Memorandum for Amended Final Results for China First Pencil Co., Ltd./Shanghai Three Star Stationery Industry Corp. (August 19, 2005). *See* Memorandum from Paul Stolz and Erin Begnal, Case Analysts through Charles Riggle, Program Manager, to the File, Analysis Memorandum for Amended Final Results for Orient International Holding Shanghai Foreign Trade Co., Ltd. (August 19, 2005). The revised final weighted–average dumping margins are as follows:

Exporter/Manufacturer	Original weighted–average margin percentage	Amended weighted–average margin percentage
China First Pencil Co., Ltd./Shanghai Three Star Stationery Industry Corp.[1]	0.61	0.15
Orient International Holding Shanghai Foreign Trade Co., Ltd.	13.25	12.69

[1] This rate also applies to subsidiaries Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and China First Pencil Fang Zheng Co., Ltd.

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries based on the amended final results. For details on the assessment of antidumping duties on all appropriate entries, see *Final Results*.

Dated: August 19, 2005.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4729 Filed 8–29–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 980901228–5228–04]

Solicitation of Applications for the Minority Business Opportunity Center (MBOC) Program

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate Minority Business Opportunity Centers (MBOC) (formerly Minority Business Opportunity Committees). The Minority Business Opportunity Centers through their staff will provide brokering services and assistance to MBEs that (a) generate $500,000 or more in annual gross revenues or (b) are capable of creating significant employment and long-term economic impact (commonly referred to as ''rapid growth-potential MBEs). In addition, MBOCs provide access to buyers of goods and services and procurement and financing opportunities within the public and private sectors. MBOC operators and executive directors should have experience in and knowledge of the local minority business sector and established working relationships with buying organizations. MBOCs are supported by a volunteer advisory committee that assists the MBOC in implementing program requirements and providing contract and financing opportunities to MBEs. The program is primarily evaluated by MBDA based on the number and dollar value of contracts and financial transactions awarded to minority business enterprises.

DATES: The closing date for receipt of applications is October 14, 2005. Completed applications must be received by MBDA no later than 5 p.m. Eastern Daylight Saving Time at the address below. Applications received after the closing date and time will not be considered. Anticipated time for processing is one hundred twenty (120) days from the date of publication of this notice. MBDA anticipates that awards for the MBOC program will be made with a start date of January 1, 2006.

ADDRESSES: *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—MBOC 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.

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—MBOC 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 for its application to be considered for award.

If Filed Electronically: Applicants are encouraged to submit their proposal electronically via the Internet and mail or hand-deliver only the pages that require original signatures by the closing date and time, as stated in this Notice. Applicants may submit their applications at *http://www.Grants.gov.* However, due to technical requirements, all sections of the application must be completed in order for the system to process the application. Program and Budget Narratives must be completed and the following paper forms must be submitted in hard copy with original signatures by the closing date and time stated in this announcement:

(1) SF–424, Application for Federal Assistance;

(2) SF–424B, Assurances—Non-Construction Programs;

(3) SF–LLL (Rev.7–97) (if applicable), Disclosure of Lobbying Activities;

(4) CD 511, Certification Regarding Lobbying; and

(5) Form CD–346, Application for Funding Assistance (Name Check form).

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 in which 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://Grants.gov.* Forms CD–511, and CD–346 may be obtained at *http://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 Avenues, Room 5073, Washington, DC 20230. Contact Stephen Boykin, MBOC Program Manager at 202–482–1712.

2. San Francisco NEC located at 221 Main Street, Suite 1280, San Francisco, CA 94105. This NEC (region) covers the states of Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon and Washington and the territory of American Samoa. Contact Linda Marmolejo, NEC Director at 415–744–3001.

3. Dallas NEC is located at 1100 Commerce Street, Suite 7B–23, Dallas, TX 75242. This region covers the states of Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah and Wyoming. Contact John Iglehart, NEC Director at 214–767–8001.

4. Chicago NEC is located at 55 E. Monroe Street, Suite 1406, Chicago, IL 60603. This region covers the states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio and Wisconsin. Contact Eric Dobyne, NEC Director at 312–353–0182.

5. Atlanta NEC is located at 401 W. Peachtree St., NW., Suite 1715, Atlanta, GA 30308. This Region covers the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and the Commonwealth of Puerto Rico and the Virgin Islands. Contact Robert Henderson, NEC Director at 404–730–3313.

6. New York NEC is located at 26 Federal Plaza, Room 3720, New York, NY 10278. This Region covers the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia and Washington, DC. Contact Hayward Davenport, NEC Director at 212–264–3262.

SUPPLEMENTARY INFORMATION: *Electronic Access:* The full text of the Federal Funding Opportunity (FFO) Announcement for the MBOC Program is available at *http://www.Grants.gov* or by contacting the appropriate MBDA representative identified above. The FFO is also available at *http://www.mbda.gov.* The FFO contains a full and complete description of the MBOC program requirements. In order to receive proper consideration, applicants must comply with all information and requirements contained in the FFO.

Funding Availability: The total award period is two years. MBDA anticipates that a total of approximately $1,600,000 will be available in each of the calendar years 2006 and 2007 to fund at least one MBOC in each of MBDA's five regions. MBDA anticipates funding five (5) to nine (9) MBOCs. Funding levels will range from $120,000 to $300,000 per year based on the Federal amount for each geographic location below. MBDA anticipates that 75 percent of the funding will be allocated to key staff, such as the Executive Director and Senior Business Development person(s). Applicants must submit project plans and budgets for each of the two years. Projects will be funded for no more than one year at a time. Awardees will be eligible for one continuation period, for a total of two years. Project proposals accepted for funding will not compete for funding in the subsequent second budget period. Second year funding will depend upon satisfactory performance, availability of funds to support continuation of the project, Department of Commerce and MBDA priorities, and will be at the sole discretion of MBDA and the Department of Commerce.

MBDA is soliciting competitive applications from organizations to operate MBOCs in the geographic areas identified below. The maximum Federal Funding Amounts for each location are also shown.

Applicant location	Federal amount
** 1. Los Angeles, CA	$300,000
*** 2. Colorado	200,000
** 3. Milwaukee, WI	120,000
* 4. Chicago, IL (Except Gary, IN Metropolitan Statistical Division)	300,000
* 5. Detroit, MI	150,000
* 6. Washington, DC,	300,000
*** 7. Florida	200,000
**** 8. Gary, IN.	120,000
* 9. San Juan, Puerto Rico	200,000
*** 10. Alabama	120,000

* Metropolitan Statistical Area (MSA). These areas are defined in OMB Bulletin 05–02 at *www.whitehouse.gov/omb/bulletins/index.html.*

** Countywide.

*** Statewide.

**** Metropolitan Statistical Division. See OMB Bulletin 05–02 for definition.

The MBOC Operator should have an established presence in the geographic area(s) identified above. Established presence is defined to mean that the applicant has had an office in the location for three (3) years preceding the date of this Announcement and has established working relationships with buying organizations. Applicants are encouraged to propose as large a service area as possible which may extend beyond the defined areas noted above.

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.803 Minority Business Opportunity Center Program.

Eligibility: For-profit entities (including sole-proprietorships, partnership, and corporations), and non-profit organizations, state and local government entities, federal agencies, American Indian Tribes, and educational institutions are eligible to operate MBOCs.

Program Description: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate Minority Business Opportunity Centers (MBOC) (formerly Minority Business Opportunity Committees). The Minority Business Opportunity Centers through their staff will provide brokering services and assistance to MBEs that (a) generate $500,000 or more in annual gross revenues or (b) are capable of creating significant employment and long-term economic impact (commonly referred to as ''rapid growth-potential MBEs''). In addition, MBOCs provide access to buyers of goods and services and procurement and financing opportunities within the public and private sectors. The MBOC program's primary objective is to match pre-qualified Minority Business Enterprises (MBEs) with private and public sector contracting and financing entities. MBOC operators and executive directors should have experience in and knowledge of the local minority business sector and demonstrated ability to gain access to key decision makers. MBOCs are supported by a volunteer advisory committee that assists the MBOC in implementing program requirements and providing contract and financing opportunities to MBEs. The program is primarily evaluated by MBDA based on the number and dollar value of contracts and financial transactions awarded to minority business enterprises.

Match Requirements: Cost sharing of at least 30% is required. Cost sharing is the portion of the project cost not borne by the Federal Government. Applicants must meet this requirement in (1) cash contributions; (2) non-cash applicant contributions; and/or (3) third party in-

kind contributions. Bonus points will be awarded for cost sharing exceeding 30 percent that is applied to MBOC staff. Applicants must provide a detailed explanation of how the cost-sharing requirement will be met.

While not a program requirement, the MBOC may charge client fees for brokering services rendered. Client fees may 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.

Selection Procedures: Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. 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 who will review all applications based on the below evaluation criteria. Each reviewer will evaluate and provide a score for each proposal. 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 following selection criteria:

1. The evaluations and rankings of the independent review panel;

2. The geographic distribution of the MBOCs;

3. The following funding priorities:

a. Having an existing client base that can be utilized for brokering contract and financial transactions.

b. Ability to establish an MBOC that has an Industry specific(s) focus and that demonstrates the utility of economic clusters including, but not limited to, aerospace, manufacturing, construction, financial services, IT and /or automotive industries; and

4. The availability of funding.

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 points that can be earned is 105 including the bonus points for staff related non federal cost sharing as described below.

1. Applicant Capability (30 Points)

The applicant's proposal will be evaluated with respect to the applicant's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- MBE Community—Experience and knowledge of the local minority business sector and established working relationships with buying organizations. This factor will be evaluated on whether or not the applicant has an established presence in the proposed geographic service area. Established presence is defined to mean that the applicant has had an office in the geographic service area for a minimum of three (3) years preceding this announcement and has established relationships with buying organizations. (10 points);
- Business Acumen—Experience in and knowledge of coaching and mentoring techniques related to serving rapid growth-potential minority firms (3 points);
- Financing—Experience in and knowledge of brokering techniques and facilitating large financial transactions (5 points);
- Procurements and Contracting—Experience in and knowledge of the public and private sector contracting opportunities and gaining access to the buyers to facilitate and broker large deals (5 points);
- Financing Networks—Knowledge of the resources and professional relationships within the corporate, banking and investment community that can be beneficial to minority-owned firms (2 points);
- Experience and knowledge of particular industries and ability to gain access to industry leaders within the geographic service area (5 points).

2. Resources (25 Points)

The applicant's proposal will be evaluated according to the following criteria:

- *Key Staff*—Discuss the experience of the staff that will operate the MBOC. In particular, an assessment will be made to determine whether key staff has the experience in working with high level key decision makers as relates to brokering and facilitating large dollar contracts and financial transactions, and coaching and mentoring. Proposed staff will be assessed to determine if they possess the expertise in utilizing information systems (10 points);
- Resources—Discuss what resources will be utilized to accomplish the work requirements (not included as part of the cost-sharing arrangement); discuss how you plan to establish and maintain a network of resources. Discuss how the Advisory Committee and subcommittees will be recruited and what their role will be. Discuss how the committees will contribute to the performance measures as outlined in the FFO (10 points);
- Equipment—Discuss how you plan to accomplish the computer hardware and software requirements stated in the FFO (5 points).

3. Techniques and Methodologies (25 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 applicant's defined service area and how the goals will be met. Specific attention should be placed on the Dollar Value of Contract Awards and Financial Transactions (as described under Definitions in the FFO). Minimum goals should be based on the availability of federal procurement dollars in the service area. The applicant should also 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, including how the Advisory Committees and Subcommittees will be formed. The plan should include a detailed discussion of the nature of the advisory role and how the committee will work with Center staff to accomplish program objectives. Program Operators have thirty (30) days to become fully operational after an award is made. Fully operational means that all staff is hired, all signs are up, all items of furniture and equipment are in place and operational, all stationery forms are developed and the Center is ready to open its doors to the public. Failure to have all staff on board within 30 days after award will result in a deduction of 10 points on the first semi-annual performance assessment report and may jeopardize continuation of the award. (5 points);
- *Work Requirements Execution Plan*—The applicant will be evaluated on how it plans to execute the Work Requirements (including implementation timelines) and how effectively and efficiently all staff will be used. Applicants should include a description for using an intra and interstate approach, depending on the geographic service area, for accomplishing the work requirements contained in the FFO (5 points).
- *Appropriateness of Applicant Defined Service Area*—The applicant will be evaluated based on the following: the size of the minority population and density of MBEs with revenues of $500,000 or rapid-growth potential in the applicant's defined service area. The presence of significant

federal and commercial contracting and financing opportunities, the size of the market, and the need for MBDA resources in the applicant's defined service area should also be discussed. (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 (5 points). MBDA anticipates that 75% of the funding level will be allocated to key staff, such as the Executive Director and senior business development persons.
- Proposed cost sharing of 30 percent is required and must be documented, including whether client fees for brokering will be charged and applied to the cost share. Applicants choosing to charge fees should set forth a fee schedule in their proposals (5 points).
- 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)
- Non Federal Cost sharing exceeding 30 percent that is related to additional staff (5) bonus points).

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 not yet been 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

Applicant should be aware that they may 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. Organization can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or on MBDA's Web site at *http://www.mbda.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.

Application Forms and Package

A completed proposal submitted by mail, hand delivery, or electronically consists of the following sections:

—Program Narrative;
—Budget and Budget Narrative;
—Standard Forms 424; 424A; 424B; and SF LLL; and
—Department of Commerce forms CD–346; and CD–511.

Failure to include, by the deadline, a signed, original SF–424 with the paper application, or separately in conjunction with an electronically submitted application, will result in the application being rejected and returned to the applicant. Failure to sign and submit the remaining forms with the paper application, or separately in conjunction with an electronically submitted application, by the deadline, will automatically cause an application to lose two (2) points in the overall score. MBDA shall not accept any changes, additions, revisions or deletions to competitive applications after the closing date for receiving applications. MBDA may contact applicants for additional clarifications.

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, CD 346, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0605–0001, and 0348–0046.

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 26, 2005.

Ronald J. Marin,

Financial Management Officer, Minority Business Development Agency.

[FR Doc. 05–17233 Filed 8–29–05; 8:45 am]

BILLING CODE 3510–21–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031005B]

Small Takes of Marine Mammals Incidental to Specified Activities; Naval Explosive Ordnance Disposal School training operations at Eglin Air Force Base, Florida

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Eglin Air Force Base (EAFB) to take marine mammals by Level B harassment incidental to Naval Explosive Ordnance Disposal School (NEODS) training operations, which include up to 30 detonations per year of small C–4 charges, off Santa Rosa Island (SRI) at EAFB.

DATES: Effective from August 1, 2005, through July 31, 2006.

ADDRESSES: A copy of the IHA and the application are available by writing to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/*

smalltake_info.htm#applications. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) amended the definition of ''harassment'' in section 18(A) of the MMPA as it applies to a ''military readiness activity'' to read as follows:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On March 11, 2004, NMFS received an application from EAFB, under section 101(a)(5)(D) of the MMPA, requesting authorization for the harassment of Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) incidental to NEODS training operations at EAFB, Florida, in the northern Gulf of Mexico (GOM). Each of up to six missions per year would include up to five live detonations of approximately 5–pound (2.3–kg) net explosive weight charges to occur in approximately 60–ft (18.3–m) deep water from 1–3 nm (1.9 to 5.6 km) off shore. Because this activity will be a multi-year activity, NMFS also plans to develop proposed regulations for NEODS training operations at EAFB.

Specified Activities

The mission of NEODS is to train personnel to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance (UXO) that constitutes a threat to people, material, installations, ships, aircraft, and operations. The NEODS proposes to utilize three areas within the Eglin Gulf Test and Training Range (EGTTR), consisting of approximately 86,000 square miles within the GOM and the airspace above, for Mine Countermeasures (MCM) detonations, which involve mine-hunting and mine-clearance operations. The detonation of small, live explosive charges disables the function of the mines, which are inert for training purposes. The proposed training would occur approximately one to three nautical miles (nm) (1.9 to 5.6 km) offshore of SRI six times annually, at varying times within the year.

Each of the six training classes would include one or two ''Live Demolition Days.'' During each set of Live Demolition Days, five inert mines would be placed in a compact area on the sea floor in approximately 60 ft (18.3 m) of water. Divers would locate the mines by hand-held sonars. The AN/PQS–2A acoustic locator has a sound pressure level (SPL) of 178.5 re 1 microPascal at 1 meter and the Dukane Underwater Acoustic Locator has a SPL of 157–160.5 re 1 microPascal at 1 meter. Because these sonar ranges are below any current threshold for protected species, noise impacts are not anticipated and are not addressed further in this analysis.

Five charges packed with five lbs (2.3 kg) of C–4 explosive material will be set up adjacent to each of the mines. No more than five charges will be detonated over the 2–day period. Detonation times will begin no earlier than 2 hours after sunrise and end no later than 2 hours before dusk and charges utilized within the same hour period will have a maximum separation time of 20 minutes. Mine shapes and debris will be recovered and removed from the water when training is completed. A more detailed description of the work proposed for 2005 and 2006 is contained in the application which is available upon request (see **ADDRESSES**).

Military Readiness Activity

NEODS supports the Naval Fleet by providing training to personnel from all four armed

services, civil officials, and military students from over 70 countries. The NEODS facility supports the Department of Defense Joint Service Explosive Ordnance Disposal training mission. The Navy and the Marine Corps believe that the ability of Sailors and Marines to detect, characterize, and neutralize mines from their operating areas at sea, on the shore, and inland, is vital to their doctrines.

The Navy believes that an array of transnational, rogue, and subnational adversaries now pose the most immediate threat to American interests. Because of their relative low cost and ease of use, mines will be among the adversaries' weapons of choice in shallow-water situations, and they will be deployed in an asymmetrical and asynchronous manner. The Navy needs organic means to clear mines and obstacles rapidly in three challenging environments: shallow water; the surf zone; and the beach zone. The Navy also needs a capability for rapid clandestine surveillance and reconnaissance of minefields and obstacles in these environments. The NEODS mission in the GOM offshore of EAFB is considered a military readiness activity pursuant to the NDAA (Public Law 108–136).

Comments and Responses

A notice of receipt of the EAFB application and proposed IHA was published in the **Federal Register** on June 7, 2005 (70 FR 33122). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission) and one individual.

Comment 1: The Commission notes that the proposed weapons test appears

to fit within the definition of a ''military readiness activity'' as defined in section 315(f) of Public Law 107–314, which includes ''the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use.'' As such, the revised definition of harassment adopted in the NDAA (Public Law 108–136) would seem to be applicable in this instance. However, NMFS' analysis of the small take request does not seem to have employed this definition. If NMFS' preliminary conclusion that ''no take by serious injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of (proposed) mitigation measures is correct, it may be that no taking by harassment can be expected and that no authorization is needed. The Commission therefore recommends that NMFS analyze the request for an IHA and the small take regulations being contemplated in light of the applicable definition of the term ''harassment.'' Although the Commission appreciates NMFS has yet to promulgate regulations or take other steps to implement the new definition, the statutory change cannot be ignored.

Response: In the preamble to the notice of proposed authorization and in this document, NMFS cited the NDAA definition of Level B harassment for military readiness activities. While NMFS believes that the monitoring to be implemented by EAFB will ensure that Level A harassment or mortality is highly unlikely, an authorization under section 101(a)(5) of the MMPA is warranted because some animals could be injured (estimate is 0.4 animals per year) if the mitigation and monitoring overlooks an animal.

Given the uncertainty associated with predicting animal presence and behavior in the field, NMFS accords some deference to applicants requesting an MMPA authorization for an activity that might fall slightly below the NDAA definition of harassment, so that they are covered for impacts that may rise to the level of take. Equally important, such an authorization also carries with it responsibilities to implement mitigation and monitoring measures to protect marine mammals.

Comment 2: The Commission remains concerned that NMFS assessment of potential harassment levels fails to apply the statutory definition of ''harassment'' in the MMPA. It is the Commission's view that an across-the-board definition of temporary threshold shift (TTS) as constituting no more than Level B Harassment inappropriately dismisses possible injury and biologically significant behavioral effects to the affected animals.

Response: As mentioned in previous **Federal Register** documents, second level impacts due to a marine mammal having a temporary hearing impairment cannot be predicted and are, therefore, speculative. The principal reason that second level impacts are not considered in classification is that any Level B disruption of behavior could, with suppositions, be seen as potentially dangerous and, therefore, considered potential Level A harassment or even lethal. Similarly, Level A injuries could be seen as being accompanied by some disruption of behavior and, therefore, Level B disturbances as well as Level A injuries. Such reasoning blurs the distinctions that the definitions of harassment attempt to make. NMFS believes that Level B harassment, if of sufficient degree and duration, can be very serious and require consideration, as has been done here. Moderate TTS does not necessarily mean that the animal cannot hear, only that its threshold of hearing is raised above its normal level. The extent of time that this impairment remains is dependent upon the amount of initial threshold shift which in turn depends on the strength of the received sound and whether the TTS is in a frequency range that the animal depends on for receiving cues that would benefit survival. It should be noted that increased ambient noise levels, due to biologics, storms, shipping, and tectonic events may also result in short-term decreases in an animal's ability to hear normally. NMFS scientists believe that marine mammals have likely adopted behavioral responses, such as decreased spatial separation, slower swimming speeds, and cessation of socialization to compensate for increased ambient noise or shifts in hearing threshold levels.

Ship strikes of whales by large vessels suggest that at least certain species of large whales do not use vessel sounds to avoid interactions. Also, there is no indication that smaller whales and dolphins with TTS would modify behavior significantly enough to be struck by an approaching vessel. Finally, a hypothesis that marine mammals would be subject to increased predation presumes that the predators would either not be similarly affected by the detonation or would travel from areas outside the impact zone, indicating recognition between the signal of a single detonation at distance and potentially debilitated food sources. Therefore, NMFS does not believe the evidence warrants that all (or an unknown percentage) of the estimated numbers of Level B harassment be considered as Level A harassment or as potential mortalities.

Comment 3: The Commission believes that NMFS needs to provide a better explanation of, and justification for, using the dual criteria established for determining non-lethal injury (i.e., the onset of slight lung hemorrhage and a 50 percent probability for eardrum rupture).

Response: Explanation and justification were provided in detail in both the SEAWOLF and CHURCHILL Final EISs (DoN 1998 and DoN 2001). An updated summary for using the dual injury criteria from those documents was provided in a recent **Federal Register** notice, published August 19, 2005, announcing the issuance of an IHA for the Navy's Precision Strike Weapons.

Comment 4: The Commission states that defining Level B acoustic harassment from explosive detonation events in terms off TTS exclusively (i.e., behavioral changes related to temporary hearing impairment), like NMFS does, implies that behavioral changes not related to TTS would not constitute harassment as defined in the MMPA, which is inconsistent with the term ''harassment'' as it is defined generally in the MMPA.

Response: NMFS justification for the way Level B Harassment is defined as related to explosive detonations is addressed in detail in a recent **Federal Register** notice, published August 19, 2005, announcing the issuance of an IHA for the Navy's Precision Strike Weapons.

Comment 5: The Commission believes that additional clarification and justification is needed concerning the threshold for ''non-injurious behavioral response'' proposed in the application (6 dB below TTS (i.e., 176 dB re 1 microPa^2-sec).

Response: Based on the science used to develop the CHURCHILL criteria, for single detonations a significant response by a marine mammal is not expected to occur other than by TTS. As noted in the proposed authorization, NEODS training operations consist of six training sessions a year, and each session consists of five single small detonations over the course of 2 days. Due to the infrequent test events, the potential variability in target locations, and the continuous movement of marine mammals in the GOM, NMFS does not anticipate sub-TTS behavioral modification because the same animal will not be repeatedly exposed. The discussion in the application and **Federal Register** notice is relevant to actions involving multiple detonations.

NMFS will address comments on this threshold criterion in an applicable proposed IHA application with multiple detonations.

Comment 6: The Commission believes that NMFS should provide a better explanation of and justification for using the 23 psi criterion (versus 12 psi) for estimating the TTS pressure threshold.

Response: This issue remains under review by the Navy, the U.S. Air Force and NMFS. Navy acousticians believe that Ketten (1995), which summarized earlier acoustic research, does not fully support using a 12–psi peak pressure threshold for TTS for underwater explosion impacts on marine mammals from small detonations. The original basis in Ketten (1995) for the use of the 12–psi threshold for the SEAWOLF and CHURCHILL actions (which were 10,000 lb (4,536 kg) detonations) is the use of a combination of in-air and in-water peak pressure measurements without adjustment for the medium. A re-examination of the basis for the 12–psi threshold by Navy acousticians indicates that, for underwater explosions of small charges, a higher threshold may be warranted. This led the Navy and Eglin to suggest scaling 12 psi for small charges, which was used in the proposed authorization notice and analysis. Although this issue remains under review by NMFS and the Navy for future rulemaking actions, as an interim criterion for this IHA and for the Navy Precision Strike Weapon (PSW) IHA, NMFS is adopting the experimental findings of Finneran *et al.* (2002) that TTS can be induced at a pressure level of 23 psi (at least in belugas). As explained here, this is considered conservative since a 23–psi pressure level was below the level that induced TTS in bottlenose dolphins.

Finneran *et al.* (2000; as described in Finneran *et al.* (2002)) conducted a study designed to measure masked TTS (MTTS) in bottlenose dolphins and belugas exposed to single underwater impulses. This study used an ''explosion simulator'' (ES) to generate impulsive sounds with pressure waveforms resembling those produced by distant underwater explosions. No substantial (i.e., 6 dB or larger) threshold shifts were observed in any of the subjects (two bottlenose dolphins and 1 beluga) at the highest received level produced by the ES: approximately 70 kPa (10 psi) peak pressure, 221 dB re re 1 micro Pa peak-to-peak (pk-pk) pressure, and 179 dB re 1 microPa^2–s total EFD. In Finneran *et al.* (2002), a watergun was substituted for the ES because it is capable of producing impulses with higher peak pressures and total energy fluxes than the pressure waveforms produced using the ES. It was also preferable to other seismic sources because its impulses contain more energy at higher frequencies, where odontocete hearing thresholds are relatively low (i.e., more sensitive). Hearing thresholds were measured at 0.4, 4 and 30 kHz. MTTSs of 7 and 6 dB were observed in the beluga at 0.4 and 30 kHz, respectively, approximately 2 minutes following exposure to single impulses with peak pressures of 160 kPa (23 psi), pk-pk pressures of 226 dB re 1 microPa, and total EFD of 186 dB re 1 microPa^2–s. Thresholds returned to within 2 dB of the pre-exposure value approximately 4 minutes post exposure. No MTTS was observed in the single bottlenose dolphin tested at the highest exposure conditions: peak pressure of 207 kPa (30 psi), 228 dB re 1 microPa pk-pk pressure, and 188 dB re 1 microPa^2–s total energy flux. Therefore, until more scientific information is obtained, NMFS has determined that the pressure criterion for small explosions can be raised from 12 psi to 23 psi. At this time, NMFS believes that setting the pressure metric at 23 psi is conservative.

Analyses indicate that the ranges for the 23–psi TTS metric at depths of 60 ft (18.3 m) (depth of NEODS missions) are slightly less conservative than the originally provided ranges for the 182–dB (re 1 microPa^2–s) TTS energy metric. For the NEODS activity, NMFS will use the more conservative values to determine impacts and areas that need to be monitored.

Comment 7: Based on the information contained in the application and **Federal Register** notice, the Commission believes that NMFS' preliminary determinations are reasonable, provided that the proposed mitigation and monitoring activities are adequate to detect all marine mammals in the vicinity of the proposed operations and sufficient to ensure that marine mammals are not being taken in unanticipated ways or numbers. The Commission notes however, that even under the best of conditions and using experienced observers, there is greater than an 80–percent likelihood that small cetaceans will not be observed if they are in the vicinity of the test site. Thus, although there may be a low probability that certain marine mammal species will be within the area where mortalities are considered possible at the time of weapon deployment, it is unclear that the proposed monitoring effort will be adequate to detect them if they are present. This being the case, the proposed monitoring activities may be insufficient to provide assurance that marine mammals are not being exposed to sound pressures or energy levels that could cause lethal injuries. Thus, NMFS, before issuing the requested authorization, should further explain its rationale for determining that the takings will only be by harassment.

Response: The vessel monitoring effort for NEODS is similar to that used in previous Navy ship-shock actions, with the differences being that the zone of influence is significantly smaller and the water is shallower, both of which make it even more likely that a marine animal will be detected. In these past ship-shock actions, detonations of 10,000 lbs (4536 kg) were used without any serious injuries or mortalities being noted during extensive follow-up monitoring. Though aerial surveys were also incorporated into the ship-shock monitoring measures, they were considered less effective than vessel monitoring for NEODS, and in fact, the Navy found that detection of bottlenose dolphins and spotted dolphins by shipboard observers was 100 percent (DON, 1999, Appendix C). Since, for safety reasons, the observer vessel will need to move out of the testing area immediately prior to the detonation (but will continue to monitor the ZOI), we can probably assume that the detection of dolphins within the ZOI is somewhat less than 100 percent. However, since the estimated (based on density estimates) number of any marine mammals that could potentially be exposed to energy levels that may cause Level A Harassment or death during the course of the 30 individual detonations per year, without any observers present, is only 0.4, NMFS is confident that no marine mammals will be killed as a result of EAFB's NEODS training operations.

Comment 8: The Commission recommends that, if NMFS determines that the potential for lethal injuries is sufficiently remote to warrant the issuance of an authorization under section 101(a)(5)(D) of the MMPA, any such authorization explicitly require that operations be suspended immediately if a dead or seriously injured animal is found in the vicinity of the test site, pending authorization to proceed or issuance of regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: NMFS concurs with the Commission's recommendation and has included the requirement in the IHA.

Description of Marine Mammals and Habitat Affected by the Activity

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and

the West Indian manatee. While a few manatees may migrate as far north as Louisiana in the summer from southern Florida (where there are generally confined in the winter), they primarily inhabit coastal and inshore waters and rarely venture offshore. NEODS missions are conducted at a distance of between 1 and 3 nm (5.6 km) from shore and effects on manatees are therefore considered very unlikely and not discussed further in this analysis.

Cetacean abundance estimates for the project area are derived from GulfCet II aerial surveys conducted from 1996 to 1998 over a 70,470 km² area, including nearly the entire continental shelf region of the EGTTR, which extends approximately 9 nm (16.7 km) from shore. The dwarf and pygmy sperm whales are not included in this analysis because their potential for being found near the project site is remote. Although Atlantic spotted dolphins do not normally inhabit nearshore waters, they are included in the analysis to ensure conservative mitigation measures are applied. The two marine mammal species expected to be affected by these activities are the bottlenose dolphin (*Tursiops truncatus*) and the Atlantic spotted dolphin (*Stenella frontalis*). Descriptions of the biology and local distribution of these species can be found in the application (see **ADDRESSES** for availability), other sources such as Wursig et al. (2000), and the NMFS Stock Assessments, which can be viewed at: *http://www.NMFS.noaa.gov/pr/PR2/Stock__Assessment__Program/sars.html*.

The habitat at the NEODS test sites is approximately 60–ft (18.3–m) deep open water. The EGTTR contains many reefs, both natural and artificial, but the closest reef to the NEODS test site is an artificial reef over 2 mi (3.2 km) away.

Atlantic Bottlenose Dolphins

Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters and occur in the slope, shelf, and inshore waters of the GOM. Based on a combination of geography and ecological and genetic research, Atlantic bottlenose dolphins have been divided into many separate stocks within the GOM. The exact structure of these stocks is complex and continues to be revised as research is completed. For now, bottlenose dolphins inhabiting waters less than 20 m (66 ft) deep in the U.S. GOM are believed to constitute 36 inshore or coastal stocks, and those inhabiting waters from 20 to 200 m (66 to 656 ft) deep in the northern GOM from the U.S.-Mexican border to the Florida Keys are considered the continental shelf stock (Waring et al., 2004). The proposed action would occur on the ocean floor at a depth of approximately 60 ft (18 m) and therefore has the potential to affect both the continental shelf and inshore stocks.

Continental shelf stock assessments were estimated using data from vessel surveys conducted between 1998 and 2001 (at 20– to 200–m (66– to 656–ft) depths). The minimum population estimate for the northern GOM continental shelf stock of the Atlantic bottlenose dolphin is 20,414 (Waring *et al.*, 2004).

The most recent inshore stock assessment surveys were conducted aerially in 1993 and covered the area from the shore or bay boundaries out to 9.3 km (5.0 nm) past the 18.3 m-depth (60.0 nm-depth) isobath (a slightly different area than that defined as inshore in the more recent stock assessment above). The minimum population estimate of the northern GOM coastal stock of the Atlantic bottlenose dolphin was 3,518 dolphins (Waring *et al.*, 1997).

Texas A&M University and the NMFS conducted GulfCet II aerial surveys in an area including the EGTTR from 1996 to 1998. Density estimates were calculated using abundance data collected from the continental shelf area of the EGTTR. In an effort to provide better species conservation and protection, estimates were adjusted to incorporate temporal and spatial variations, surface and submerged variations, and overall density confidence. The adjusted density estimate for Atlantic bottlenose dolphins within the project area is 0.810 individuals/km². A small number of dolphins could not be identified specifically as Atlantic bottlenose or Atlantic spotted and their estimated density was 0.053 individuals/km².

Atlantic Spotted Dolphins

Atlantic spotted dolphins are endemic to the tropical and warm temperate waters of the Atlantic Ocean and can be found from the latitude of Cape May, New Jersey south along mainland shores to Venezuela, including the GOM and Lesser Antilles. In the GOM, Atlantic spotted dolphins occur primarily in continental shelf waters 10 to 200 m (33 to 656 ft) deep out to continental slope waters less than 500 m (1640.4 ft) deep. One recent study presents strong genetic support for differentiation between GOM and western North Atlantic management stocks, but the Gulf of Mexico stock has not yet been further subdivided.

Abundance was estimated in the most recent assessment of the northern GOM stock of the Atlantic spotted dolphin using combined data from continental shelf surveys (20 to 200 m (66 to 656 ft) deep) and oceanic surveys (200 m (656 ft)) to the offshore extent of U.S. Exclusive Economic Zone) conducted from 1996 to 2001. The minimum population estimate for the northern GOM is 24,752 Atlantic spotted dolphins (Waring *et al.*, 2004).

Density estimates for the Atlantic spotted dolphin within the EGTTR were calculated using abundance data collected during the GulfCet II aerial surveys. In an effort to provide better species conservation and protection, estimates were adjusted to incorporate temporal and spatial variations, surface and submerged variations, and overall density confidence. The adjusted density estimate for Atlantic spotted dolphins within the project area is 0.677 individuals/km². A small number of dolphins could not be identified specifically as Atlantic bottlenose or Atlantic spotted and their estimated density was 0.053 individuals/km².

Potential Effects of Activities on Marine Mammals

The primary potential impact to the Atlantic bottlenose and the Atlantic spotted dolphins occurring in the EGTTR from the proposed detonations is Level B harassment from noise. There is a slight potential, absent mitigation, that a few mammals would be injured or killed due to the energy generated from an explosive force on the sea floor. Analysis of NEODS noise impacts to cetaceans was based on criteria and thresholds presented in both Finneran *et al.*, 2002, and in the U.S. Navy Environmental Impact Statements for ship shock trials of the SEAWOLF submarine and the WINSTON CHURCHILL vessel and subsequently adopted by NMFS.

Non-lethal injurious impacts (Level A Harassment) are defined in as tympanic membrane (TM) rupture and the onset of slight lung injury. The threshold for Level A Harassment corresponds to a 50 percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 microPa²s. TM rupture is well-correlated with permanent hearing impairment (Ketten (1998) indicates a 30–percent incidence of permanent threshold shift (PTS) at the same threshold). The zone of influence (ZOI)(farthest distance from the source at which an animal is exposed to the EFD level referred to) for the Level A Harassment threshold is 52.2 m (171.6 ft).

Level B (non-injurious) Harassment includes temporary (auditory) threshold shift (TTS), a slight, recoverable loss of

hearing sensitivity. The energy criterion used for TTS is 182 dB re 1 microPa^2's maximum EFD level in any 1/3–octave band above 100 Hz for toothed whales (e.g., dolphins). The ZOI for this threshold is 229.8 m (754.0 ft). The pressure criterion, 23 psi, has recently been established by NMFS based on the more current work of Finneran et al., 2002. The ZOI for 23 psi is 222 m (728 ft). A detailed justification for the recent change in NMFS' pressure exposure criteria may be found in the **Federal Register** notice for the issuance of an IHA to the Navy for Precision Strike Weapons, published August 19, 2005.

Level B Harassment also includes behavioral modifications resulting from repeated noise exposures (below TTS) to the same animals (usually resident) over a relatively short period of time. No strictly sub-TTS behavioral responses (i.e., Level B harassment) are anticipated with the NEODS training activities because there are no successive detonations (5 small detonations in the course of 2 days, some of which may be separated by less than 20 minutes, but which would be in separate locations) which could provide causation for a behavioral disruption rising to the level of a significant alteration or abandonment of behavioral patterns without also causing TTS. Also, repetitive exposures (below TTS) to the same resident animals are highly unlikely due to the infrequent NEODS training sessions (6 sessions per year), the potential variability in target locations, and the continuous movement of marine mammals in the northern GOM.

Because of mitigation measures proposed, NMFS anticipates that only Level B harassment will occur incidental to the NEODS training operations and that these events will result in no more than a negligible impact on marine mammal species or their habitats.

Mitigation and Monitoring

Mitigation will consist primarily of surveying and taking action to avoid detonating charges when protected species are within the ZOI. A trained, NMFS-approved observerwill be staged from the highest point possible on a support ship and have proper lines of communication to the Officer in Tactical Command. The survey area will be 460 m (1509 ft) in every direction from the target, which is twice the radius of the ZOI for Level B Harassment (230 m (755 ft)). To ensure visibility of marine mammals to observers, NEODS missions will be delayed if whitecaps cover more than 50 percent of the surface or if the waves are greater than 3 feet (Beaufort Sea State 4).

Pre-mission monitoring will be used to evaluate the test site for environmental suitability of the mission. Visual surveys will be conducted 2 hours, 1 hour, and 5 minutes prior to the mission to verify that the ZOI (230 m (755 ft)) is free of visually detectable marine mammals, sea turtles, large schools of fish, large flocks of birds, large Sargassum mats, or large concentrations of jellyfish and that the weather is adequate to support visual surveys. The observer will plot and record sightings, bearing, and time for all marine mammals detected, which would allow the observer to determine if the animal is likely to enter the test area during detonation. If an animal appears likely to enter the test area during detonation, if marine mammals, sea turtles, large schools of fish, large flocks of birds, large Sargassum mats, or large concentrations of jellyfish are present, or if the weather is inadequate to support monitoring, the observer will declare the range fouled and the tactical officer will implement a hold until monitoring indicates that the test area is and will remain clear of detectable marine mammals or sea turtles.

Monitoring of the test area will continue throughout the mission until the last detonation is complete. The mission would be postponed if:

(1) Any marine mammal is visually detected within the ZOI (230 m (755 ft)). The delay would continue until the animal that caused the postponement is confirmed to be outside the ZOI (visually observed swimming out of the range).

(2) Any marine mammal or sea turtle is detected in the ZOI and subsequently is not seen again. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

(3) Large *Sargassum* rafts or large concentrations of jellyfish are observed within the ZOI. The delay would continue until the *Sargassum* rafts or jellyfish that caused the postponement are confirmed to be outside of the ZOI either due to the current and/or wind moving them out of the mission area.

(4) Large schools of fish are observed in the water within of the ZOI. The delay would continue until large fish schools are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, mitigation measures would continue while operations personnel attempted to recognize and solve the problem (detonate the charge).

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals or sea turtles. Post-detonation monitoring, concentrating on the area down current of the test site, will commence immediately following each detonation and continue for at least two hours after the last detonation. The monitoring team will document and report to the appropriate marine animal stranding network any marine mammals or turtles killed or injured during the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the teams would be documented and reported to the Officer in Tactical Command.

Reporting

EAFB will notify NMFS 2 weeks prior to initiation of each training session. Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, NMFS, by the next working day. A summary of mission observations and test results, including dates, times, and locations of detonations as well as pre- and post-mission monitoring observations, will be submitted to the Division of Permits, Conservation, and Education, Office of Protected Resources (NMFS) and the Southeast Regional Office (NMFS) within 90 days after the completion of the last training session.

Numbers of Marine Mammals Expected to be Harassed

Estimates of the potential number of Atlantic bottlenose dolphins and Atlantic spotted dolphins to be harassed by the training were calculated using the number of distinct firing or test events (maximum 30 per year), the ZOI for noise exposure, and the density of animals that potentially occur in the ZOI. The take estimates provided here do not include mitigation measures, which are expected to further minimize impacts to protected species and make injury or death highly unlikely.

The estimated number of Atlantic bottlenose dolphins and Atlantic spotted dolphins that could potentially be exposed to the Level A Harassment threshold (205 dB re 1 microPa^2 s) during one year is less than one (0.22 and 0.19, respectively).

For Level B Harassment, two separate criteria were established, one expressed in dB re 1 microPa^{2}s maximum EFD level in any 1/3–octave band above 100

Hz, and one expressed in psi. The estimated numbers of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially exposed to 182 dB and 23 psi, during one year, if mitigation measures were not effectively implemented within the 230–m (754 ft) ZOI, are 4 and 3 individuals.

Possible Effects of Activities on Marine Mammal Habitat

The Air Force anticipates no loss or modification to the habitat used by Atlantic bottlenose dolphins or Atlantic spotted dolphins in the EGTTR. The primary source of marine mammal habitat impact resulting from the NEODS missions is noise, which is intermittent (maximum 30 times per year) and of limited duration. NMFS does not anticipate that either debris (which will be recovered following test activities) or the minimal chemical residue from the detonated charges will affect marine mammal habitat.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Atlantic bottlenose dolphins Atlantic spotted dolphins in Florida waters, and thus, there are no anticipated effects on subsistence needs.

Endangered Species Act

In a Biological Opinion issued on October 25, 2004, NMFS concluded that the NEODS training missions and their associated actions are not likely to jeopardize the continued existence of threatened or endangered species under the jurisdiction of NMFS or destroy or adversely modify critical habitat that has been designated for those species. NMFS has issued an incidental take statement (ITS) for 4 species of sea turtles (leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*), Kemp's ridley sea turtle (*Lepidochelys kempii*), and loggerhead sea turtle (*Caretta caretta*)) pursuant to section 7 of the Endangered Species Act. The ITS contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. This IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously.

National Environmental Policy Act

NMFS prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) on the Issuance of Authorizations to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida. Therefore, preparation of an EIS on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Conclusions

NMFS has determined that the NEODS training operations, as described in this document and in the application for an IHA, will result in no more than Level B harassment of Atlantic bottlenose dolphins and Atlantic spotted dolphins and will have no more than a negligible impact on these stocks. The effects of the NEODS training are expected to be limited to short-term and localized TTS-related behavioral changes, and these takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. With the application of the mitigation measures, as well as the potential density of dolphins in the area of the NEODS training operations, NMFS believes it highly unlikely that the proposed action will result in any injury or mortality of marine mammals. Additionally, the NEODS training operations will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses for Atlantic bottlenose dolphins or Atlantic spotted dolphins in Florida waters.

Authorization

NMFS has issued a 1–year IHA to EAFB for the take of Atlantic bottlenose dolphins and Atlantic spotted dolphins, by harassment, incidental to NEODS training operations, which include up to 30 detonations of small C–4 charges per year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 23, 2005.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–17224 Filed 8–29–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082305D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held September 12 16, 2005.

ADDRESSES: These meetings will be held at the Wyndham Bourbon Orleans, 717 Orleans Street, New Orleans, LA 70116.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Wednesday, September 14, 2005

1:30 p.m. Convene.
1:45 p.m. – 5 p.m. – Receive public testimony on (a) Final Reef Fish Amendment 18A/Environmental Assessment (EA), (b) Final Red Grouper Regulatory Amendment, and (c) Exempted fishing permits (if any).
5 p.m. – 5:15 p.m. – Receive the Budget/Personnel Committee Report.
5:15 p.m. – 5:30 p.m. – Receive the Mackerel Management Committee Report.

Thursday, September 15, 2005

8:30 a.m. – 11:30 a.m. – Receive the joint Reef Fish/Shrimp Management Committees Report.
1 p.m. – 3 p.m. – Receive the Reef Fish Management Committee Report.
3 p.m. – 3:30 p.m. – Receive the Migratory Species Management Committee Report.
3:30 p.m. – 4:30 p.m. – Receive the joint Reef Fish/Mackerel/Red Drum Committees Report.
4:30 p.m. – 5 p.m. – Receive the Administrative Policy Committee Report.

Friday, September 16, 2005

8:30 a.m. – 8:45 a.m. – Receive the Enforcement Reports.
8:45 a.m. – 9 a.m. – Receive the Regional Administrator's Report.
9 a.m. – 9:30 a.m. – Receive the State Director's Reports.
9:30 a.m. – 10 a.m. – Other Business.
10 a.m. – 10:15 a.m. – Election of Chair and Vice-Chair.

Committee

Monday, September 12, 2005

8:30 a.m. – 12 noon – The Reef Fish Management Committee will review public hearing summaries, public letters, Advisory Panel (AP)

recommendations, Scientific and Statistical Committee (SSC) recommendations, Federal recommendations and committee recommendations on Final Reef Fish Amendment 18A/EA, which addresses the grouper fishery and make recommendations to Council. The Committee will review Public Hearing Draft Reef Fish Amendment 26 for a red snapper individual fishing quota (IFQ) program and may modify their preferred alternatives for management measures for public hearings. The Committee will then review the Final Red Grouper Regulatory Amendment and make recommendations to Council.

1:30 p.m. – 5:30 p.m. – The joint Reef Fish/Shrimp Management Committees will review Red Snapper Management Scenarios based on the data provided by the new red snapper stock assessment conducted under the Southeast Data, Assessment and Review (SEDAR) process, which yields a peer-reviewed assessment. The Committees will review a scoping document for a Regulatory Amendment on bycatch reduction device (BRD) certification criterion and certification of new BRDs. The Committees will then review a scoping document for a joint Reef Fish/Shrimp amendment targeted at reducing shrimp trawl by-catch; bycatch in the directed reef fish fishery; and effort limitation alternatives for the shrimp fishery.

Tuesday, September 13, 2005

8 a.m. – 9 a.m. – The joint Reef Fish/Shrimp Committees will reconvene to complete their work.

9 a.m. – 9:30 a.m. – The Mackerel Management Committee will meet to discuss setting a control date for the Spanish mackerel fisheries.

9:30 a.m. – 10 a.m. – The Budget/Personnel Committee will meet to review the Council's CY 2006 Operating Budget.

10 a.m. – 11:30 a.m. – The Migratory Species Management Committee will hear a presentation on a proposed highly migratory species (HMS) amendment.

Wednesday, September 14, 2005

8:30 a.m. – 10 a.m. – The Administrative Policy Committee will meet to review current SSC Operations. They will also discuss the possibility of holding a Joint SSC/Council meeting and a Joint AP/Council Meeting. The Committee will then consider a 2-year term for Council Chair and Vice-Chair, and discuss the pros and cons of limiting Council meetings to 4 or 5 per year.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by September 1, 2005.

Dated: August 24, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4719 Filed 8–29–05; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Meeting With Interested Individuals for Comment on Communications and Marketing Campaign Concepts for Baby Boomers

AGENCY: Corporation for National and Community Service.

ACTION: Notice of meeting.

SUMMARY: The Corporation for National and Community Service will hold a meeting to discuss the development of its proposed communications and marketing campaign concepts targeted at baby boomers. The mission of the Corporation for National and Community Service is to provide opportunities for Americans to engage in service that addresses our nation's educational, public safety, environmental and other human needs. As part of this mission, the Corporation is developing a marketing campaign targeted at baby boomers, as this audience moves towards retirement and is faced with an increase in free time. The intent of the marketing campaign will be to recruit baby boomers to various Corporation programs, as well as to volunteer service in general. In holding meetings to discuss the Corporation's draft campaign concepts for baby boomers, we are interested in receiving comments from individuals born between the years of 1946 and 1964.

DATES: Discussions will be tentatively scheduled on the following dates, in the following locations: Boston, Massachusetts on September 9, 2005; Seattle, Washington on September 12, 2005; and Detroit, Michigan on September 14, 2005.

ADDRESSES: For information on meeting times and locations, please contact Shannon Maynard, Office of Public Affairs, Corporation for National and Community Service, by email at *smaynard@cns.gov* or by phone at (202) 606–6713.

FOR FURTHER INFORMATION CONTACT: Shannon Maynard, Office of Public Affairs, Corporation for National and Community Service, by e-mail at *smaynard@cns.gov* or by phone at (202) 606–6713.

Dated: August 23, 2005.

Sandy Scott,

Acting Director, Office of Public Affairs.

[FR Doc. 05–17168 Filed 8–29–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Program and Analytic Studies, Policy and Program Studies Service, Department of Education.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), 5 United States Code (U.S.C.) 552a, the Department of Education (Department) publishes this notice of a new system of records entitled ''The Graduate Fellowship Programs Participants Study (18–17–01).'' This system will contain information about graduate students who received financial support between the years 1997–1999 through one or more of the following fellowship programs sponsored by the Office of Postsecondary Education (OPE): the Foreign Language and Area Studies Fellowship Program (FLAS), the Fulbright-Hays Doctoral Dissertation

Research Abroad Fellowship Program (DDRA), the Jacob K. Javits Fellowship Program (Javits), and the Graduate Assistance in Areas of National Need Fellowship Program (GAANN). It will include names; social security numbers; addresses; demographic information such as race/ethnicity, age, educational background, degree and enrollment information; fellowship funding and financial support; employment; and responses to survey questions.

The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act.

DATES: We must receive your comments on the proposed routine uses for this system of records on or before September 29, 2005.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 24, 2005. This system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on October 5, 2005 or (2) September 29, 2005, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses of this system to Dr. David Goodwin, Director, Program and Analytic Studies Division, Policy and Program Studies Service, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W231, Washington, DC 20202. Telephone: (202) 401–3630.

If you prefer to send your comments through the Internet, use the following address: *Comments@ed.gov*.

You must include the term ''Graduate Fellowship Programs Participants Study'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 6W200, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice.

If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. David Goodwin. Telephone: (202) 401–3630. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that is maintained in a system of records from which information is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record'' and the system, whether manual or computer-driven, is called a ''system of records.'' The Privacy Act requires each agency to publish a system of records notice in the **Federal Register** and to prepare reports to OMB and congressional committees whenever the agency publishes a new system of records.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news.fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 25, 2005.

Tom Luce,

Assistant Secretary , Office of Planning, Evaluation and Policy Development.

For reasons discussed in the preamble, the Director, Policy and Program Studies Service, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18–17–01

SYSTEM NAME:

The Graduate Fellowship Programs Participants Study.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Program and Analytic Studies Division, Policy and Program Studies Service, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6W231, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on graduate students who received financial support through one or more of the following programs sponsored by OPE: FLAS, DDRA, Javits, and GAANN during the years 1997–1999.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of the name, address, and social security number of the study participants as well as demographic information such as race/ethnicity, age, educational background, degree and enrollment information; fellowship funding and financial support; employment; and responses to survey questions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 6381h and 6381j.

PURPOSE(S):

The information in this system is used for the following purposes: (1) to identify the educational outcomes of study participants; and (2) to provide information to the Department on the extent to which study participants obtain employment in areas that correspond to their fields of study.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records

without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected.

These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement.

(1) *Freedom of Information Act (FOIA) and the Privacy Act of 1974 Advice Disclosure.* The Department may disclose records to the Department of Justice (DOJ) and the Office of Management and Budget if the Department seeks advice regarding whether records maintained in the system of records are required to be released under the FOIA and the Privacy Act of 1974.

(2) *Disclosure to the Department of Justice (DOJ).* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(3) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in this system.

(4) *Litigation and Alternative Dispute Resolution (ADR) Disclosures.*

(a) *Introduction.* In the event that one of the following parties is involved in litigation or ADR, or has an interest in litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any of its components; or

(ii) Any Department employee in his or her official capacity; or

(iii) Any Department employee in his or her official capacity if the Department of Justice (DOJ) is asked to provide or arrange for representation of the employee;

(iv) Any Department employee in his or her individual capacity if the Department has agreed to represent the employee; or

(v) The United States if the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the Department of Justice (DOJ).* If the Department determines that disclosure of certain records to the DOJ, or attorneys employed by the DOJ, is relevant and necessary to litigation or ADR, and is compatible with the purpose for which the records were collected, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosures.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, an individual or entity designated by the Department or otherwise empowered to resolve or mediate disputes is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Parties, counsels, representatives, and witnesses.* If the Department determines that disclosure of certain records to a party, counsel, representative or witness is relevant and necessary to the litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(5) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

(6) *Congressional Member Disclosure.* The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(7) *Disclosure for use by law enforcement agencies.* The Department may disclose information to any Federal, State, local, or other agency responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the agency's jurisdiction.

(8) *Enforcement disclosure.* In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, Executive order, rule, regulation, or order issued pursuant thereto.

(9) *Employment, benefit, and contracting disclosure.*

(a) *Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving agency's decision on the matter.

(10) *Employee grievance, complaint or conduct disclosure.* The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a present or former employee of the Department: Complaint, grievance, discipline or competence determination proceedings. The disclosure may only be made during the course of the proceeding.

(11) *Labor organization disclosure.* The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation. The disclosures will be made only as authorized by law.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are on a computer database as well as in hard copy.

RETRIEVABILITY:

The records in this system are indexed by the name of the individual and/or a number assigned to each individual.

SAFEGUARDS:

All physical access to the Department's site, and the sites of Department contractors where this system of records is maintained, controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need to know'' basis, and controls individual users'' ability to access and alter records within the system. The contractor, InfoUse, has established a set of procedures to ensure confidentiality of data. The system ensures that information identifying individuals is in files physically separated from other research data. InfoUse will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include password-protected accounts that authorize users to use the InfoUse system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services and additional security features that the network administrator establishes for projects as needed.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS).

SYSTEM MANAGER AND ADDRESS:

Director, Program and Analytic Studies Division, Policy and Program Studies Service, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W231, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from surveys with graduate students who received financial support through one or more of the following programs sponsored by OPE: FLAS, DDRA, Javits, and GAANN during the years 1997–1999. Surveys are being conducted as a source of providing information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–17240 Filed 8–29–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–130–000]

Premcor Inc., Valero Energy Corp.; Notice of Filing

August 24, 2005.

Take notice that on August 19, 2005, Premcor Inc. (Premcor), and Valero Energy Corporation (Valero) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities, consisting of the books, records and FERC tariff of Premcor Power Marketing LLC, by way of Valero's acquisition of Premcor through an Agreement and Plan of Merger, certain portions of which the Applicants request be treated as confidential.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 2, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4722 Filed 8–29–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 24, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–931–008; ER01–931–009; ER01–930–008; ER01–930–009.

Applicants: Panda Gila River, L.P.; Union Power Partners, L.P.

Description: Panda Gila River Power, L.P. and Union Power Partners, L.P. submits response to the Commission's deficiency letter issued 8/12/05 in Docket No. ER99–2342–004, et al.

Filed Date: 08/18/2005.

Accession Number: 20050823–0172.

Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Docket Numbers: ER02–1600–004.

Applicants: Green Mountain Energy Company.

Description: Green Mountain Energy Company submits revisions to its FERC Electric Tariff, Original Volume No. 1 , to include the change in status language required by the Commission's Order No. 652 and the market behavior rules language.

Filed Date: 08/19/2005.

Accession Number: 20050823–0146.

Comment Date: 5 p.m. eastern time on Friday, September 09, 2005.

Docket Numbers: ER05–1322–000.

Applicants: Xcel Energy Operating Companies.

Description: Xcel Energy submits compliance tariff pages to the Xcel Energy Operating Companies the Fourth Revised Sheet No. 9, First Revised Sheet no. 168.1, Original Sheet No. 329 and Original Sheet Nos. 345 to 446 to its Joint Open Access Transmission Tariff, First Revised Volume No. 1.

Filed Date: 08/12/2005.

Accession Number: 20050815–0216.

Comment Date: 5 p.m. eastern time on Tuesday, September 06, 2005.

Docket Numbers: ER05–1365–000.

Applicants: Premcor Power Marketing LLC.

Description: Premcor Power Marketing, LLC submits notice of cancellation of its FERC Electric Tariff, Original Volume No. 1, First Revised Sheet Nos. 1–5, Superseding Original Sheet Nos. 1–5 to be effective 8/31/05.

Filed Date: 08/19/2005.

Accession Number: 20050823–0144.

Comment Date: 5 p.m. eastern time on Friday, August 26, 2005.

Docket Numbers: ER05–1377–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits an amendment to its Market Based Rate Tariff, FERC Electric Tariff Original Volume No. 6, to be effective 10/18/05.

Filed Date: 08/18/2005.

Accession Number: 20050822–0082.

Comment Date: 5 p.m. eastern time on Thursday, September 08, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4721 Filed 8–29–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[R01–OAR–2005–ME–0006; FRL–7962–5]

Adequacy Status of Submitted State Implementation Plans (SIP) for Transportation Conformity Purposes: 5 Percent Increment of Progress Motor Vehicle Emissions Budgets for the Portland Maine 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this action, EPA is notifying the public that we have found the on-road motor vehicle emissions budgets contained in the Portland Maine marginal 8-hour ozone nonattainment area 5 Percent Increment of Progress SIP adequate for transportation conformity purposes. As a result of our finding, the motor vehicle emissions budgets from the submitted SIP revision must be used for future conformity determinations in the Portland Maine area.

DATES: These motor vehicle emissions budgets are effective September 14, 2005.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/conform/adequacy.htm.* You may also contact Mr. Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: By letters dated June 9, 13 and 14, 2005, the Maine Department of Environmental Protection (ME DEP) submitted to EPA its State Implementation Plan Revision for Portland Maine's 15 Percent Rate of Progress Plan; 5 Percent Increment of Progress Plan; Motor Vehicle Emissions Budget; and 2002 Base Year Emission Inventory. As the 1-hour ozone standard was revoked on June 15, 2005, and the Portland Maine 1-hour ozone nonattainment area covers a different geographic area than the Portland Maine 8-hour ozone nonattainment area, EPA has not taking action to determine the adequacy of the 1-hour motor vehicle emission budgets, nor is EPA approving the 1-hour budgets for conformity purposes. The 2007 volatile organic compounds (VOC) and nitrogen oxides (NO_X) motor vehicle emissions budgets

associated with the Portland Maine 8-hour ozone 5 Percent Increment of Progress SIP are 20.115 tons per summer weekday of VOC and 39.893 tons per summer weekday of NO_X. These 2007 budgets cover Sagadahoc County and portions of York, Cumberland, and Androscoggin Counties. On July 12, 2005, the availability of these budgets was posted on EPA's website for the purpose of soliciting public comments. The comment period closed on August 11, 2005, and EPA received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA New England sent a letter to Maine Department of Environmental Protection on August 12, 2005, finding that the 2007 MOBILE6.2 motor vehicle emissions budgets for the Portland Maine 8-hour ozone nonattainment area are adequate and must be used for transportation conformity determinations.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 20, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–17202 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7962–7]

Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Notification of Advisory Meeting of the CASAC Ambient Air Monitoring and Methods (AAMM) Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee's (CASAC) Ambient Air Monitoring and Methods (AAMM) Subcommittee to conduct a peer review on the Federal Reference Method (FRM) for thoracic coarse particulate matter ($PM_{10-2.5}$) and a consultation on various PM monitoring-related issues.

DATES: The meeting will be held Wednesday, September 21, 2005, from 9 a.m. to 5:30 p.m. (eastern time), and Thursday, September 22, 2005, from 8:30 a.m. to 3 p.m. (eastern time).

ADDRESSES: The meeting will take place at the Marriott Durham Civic Center Hotel, 210 Foster Street, Durham, NC 27701.

FOR FURTHER INFORMATION CONTACT: Any member of the public who would like to submit written or brief oral comments (5 minutes or less), or wants further information concerning this meeting, should contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: *CASAC and the AAMM Subcommittee:* The CASAC, which comprises seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC, which is administratively located under the SAB Staff Office, is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App.

The SAB Staff Office established the CASAC AAMM Subcommittee in early 2004 as a standing subcommittee to provide the EPA Administrator, through the CASAC, with advice and recommendations, as necessary, on topical areas related to ambient air monitoring, methods and networks. The Subcommittee complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Under section 108 of the CAA, the Agency is required to establish NAAQS for each pollutant for which EPA has issued criteria, including particulate matter (PM). Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. The Agency is also to revise the NAAQS, if appropriate, based on the revised criteria.

EPA is currently reviewing the NAAQS for PM. As part of this review, the Agency is considering potential NAAQS for thoracic coarse particulate matter ($PM_{10-2.5}$). Further information on EPA's ongoing PM NAAQS review is available at the following URL: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html.*

In conjunction with the review of the PM NAAQS, EPA is evaluating potential monitoring methods for measurement of $PM_{10-2.5}$. The Agency's Office of Air Quality Planning and Standards (OAQPS), within EPA's Office of Air and Radiation (OAR), has requested that the CASAC conduct a peer review of the Federal Reference Method (FRM) for $PM_{10-2.5}$ to provide independent scientific advice on the appropriateness of this method for being the basis of comparison in approving coarse-particle continuous monitors. The FRM for $PM_{10-2.5}$ will establish the basis for approval of continuous-monitoring methods in a performance-based measurement system process. In addition, OAQPS has asked the CASAC to conduct a consultation to the Agency on: Fine particle ($PM_{2.5}$) FRM optimization and equivalency criteria for continuous monitors; and $PM_{10-2.5}$ methods evaluation, network data quality objectives (DQOs), and equivalency criteria for continuous monitors. The CASAC AAMM Subcommittee provided advice and recommendations for this ongoing work at a July 22, 2004 consultative meeting on $PM_{10-2.5}$ methods and DQOs.

Any questions concerning EPA's ambient air monitoring efforts should be directed to Mr. Tim Hanley, OAQPS, at phone: (919) 541–4417; or e-mail: *hanley.tim@epa.gov.* Questions concerning the Agency's FRM development efforts and $PM_{10-2.5}$ measurement methods evaluation should be directed to Dr. Robert Vanderpool of EPA's National Exposure Research Laboratory, within the Office of Research and Development, at phone: (919) 541–7877; or e-mail: *vanderpool.robert@epa.gov.*

Availability of Meeting Materials: Prior to the meeting of the CASAC AAMM Subcommittee, OAQPS will post written meeting materials on the ''CASAC File Area'' page of the Agency's Ambient Monitoring Technology Information Center (AMTIC) Web site at the following URL: *http://www.epa.gov/ttn/amtic/casacinf.html.* Furthermore, the SAB Staff Office will post a copy of the final agenda and charge to the Subcommittee for this advisory meeting on the SAB Web site at URL: *http://www.epa.gov/sab* (under ''Meeting Agendas''), and the CASAC AAMM Subcommittee page at: *http://www.epa.gov/sab/panels/casac_aamm_subcom.html*, respectively, in advance of the Subcommittee's meeting.

Procedures for Providing Public Comment: The SAB Staff Office accepts written public comments of any length, and will accommodate oral public comments whenever possible. The SAB Staff Office expects that public will not repeat previously-submitted oral or written statements. *Oral Comments:* Requests to provide oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Butterfield no later than noon September 14, 2005 to reserve time on the meeting September 21, 2005 meeting agenda. Opportunities for oral comments will be limited to no more than five minutes per speaker. *Written Comments:* Written comments should be received in the SAB Staff Office by September 16, 2005 so that the comments may be made available to the members of the CASAC AAMM Subcommittee for their consideration. Comments should be supplied to Mr. Butterfield at the contact information provided above, in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting in person are also asked to bring 75 copies of their comments for public distribution.

Meeting: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Butterfield at the phone number or an e-mail address noted above at least at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 22, 2005.

Anthony Maciorowski,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–17197 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7962–8]

Science Advisory Board Staff Office Notification of Advisory Meeting of the SAB Aquatic Life Criteria Guidelines Consultative Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Aquatic Life Criteria Guidelines Consultative Panel.

DATES: September 21, 2005: The SAB Aquatic Life Criteria Guidelines Consultative Panel will meet on Wednesday, September 21, 2005 at 8:30 a.m., adjourning at approximately 5 p.m. (Eastern Daylight Time).

ADDRESSES: The public meeting of the Panel will be held at the Science Advisory Board Conference Center located at 1025 F Street, NW., Suite 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board by telephone/voice mail at (202) 343–9995, fax at (202) 233–0643, by e-mail at *armitage.thomas@epa.gov*, or by mail at U.S. EPA SAB (1400F), 1200 Pennsylvania Ave., NW., Washington, DC, 20460. General information about the SAB and the meeting location may be found on the SAB Web site, *http://www.epa.sab.*

SUPPLEMENTARY INFORMATION:

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is hereby given that the Panel will hold a public meeting to conduct a consultation with EPA on a proposed framework for revising the Aquatic Life Criteria Guidelines. The dates and times for the meeting are provided above.

Background: Background on the meeting described in this notice was provided in a **Federal Register** Notice published on February 15, 2005 (70 FR 7734–7735). EPA's recommended ambient water quality criteria for aquatic life provide guidance to states and tribes for adopting water quality standards which are the basis for controlling discharges or releases of pollutants. Currently, ambient water quality criteria for aquatic life protection are derived according to the Guidelines for Derivation of Ambient Water Quality Criteria for the Protection of Aquatic Life and Their Uses, published in 1985. EPA's Office of Water has assessed the need to update the Guidelines, identified issues to be addressed in the Guidelines revisions, and will review the state-of-the-science and recommend new or improved approaches for deriving ambient water quality criteria. At the meeting, the SAB Aquatic Life Criteria Guidelines Panel will conduct a consultation with EPA on a proposed framework for improving the development of ambient water quality criteria. A roster of Panel members and their biosketches will be posted on the SAB website prior to the meeting.

Availability of Meeting Materials: The meeting agenda and the charge to the SAB panel will be posted on the SAB website prior to the meeting. Meeting materials also include: (1) Four papers that provide an overview or framework of the approaches and methods being proposed for revising aquatic life water quality criteria; (2) an EPA report, Summary of Proposed Revisions to the Aquatic Life Criteria Guidelines; and (3) EPA's Guidelines for Ecological Risk Assessment. EPA's Guidelines for Ecological Risk Assessment are available at the following Web site: *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=12460.* Copies of other materials may be obtained by contacting Dr. Tala Henry, EPA Office of Water, by telephone: 202–566–1323, or e-mail: *henry.tala@epa.gov.*

Procedures for Providing Public Comments: The SAB Staff Office accepts written public comments, and will accommodate oral public comments when possible. *Written Comments:* Written comments are preferred and should be submitted by e-mail to Dr. Thomas Armitage at *armitage.thomas@epa.gov* in Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format) by September 14, 2005. Those without access to e-mail may submit one signed hard copy of the

comments to Dr. Armitage by mail or courier. Commenters planning to attend the meeting in person are asked to bring 35 copies of their comments for public distribution. *Oral Comments:* Requests to provide oral comments must be in writing (e-mail or fax) and received by Dr. Armitage no later than September 14, 2005 to reserve time on the meeting agenda. Presentation time for oral comment will typically be about five minutes per speaker, but may be reduced depending on time availability and the number of requests.

Meeting Accommodations: Individuals requiring special accommodation to access the public meeting listed above should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: August 23, 2005.

Anthony Maciorowski,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–17198 Filed 8–29–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[RFA AA169]

Building for Local Organizations in the Republic of South Africa and the Kingdoms of Lesotho and Swaziland; Notice of Availability of Funds—Amendment

A notice announcing the availability of Fiscal Year (FY) 2005 funds for a cooperative agreement for Building for Local Organizations in the Republic of South Africa and the Kingdoms of Lesotho and Swaziland, was published in the **Federal Register**, August 12, 2005, Volume 70, Number 155, pages 47209–47214.

This notice is amended as follows:

Page 47210, Approximate Total Funding: delete $500,000, and replace with $5,000,000. Page 47210, Approximate Average Award, delete $100,000, and replace with $500,000–$1,000,000. Page 47210, Ceiling of Award Range, delete $100,000, and replace with $1,000,000.

Dated: August 23, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–17177 Filed 8–29–05; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held via teleconference on September 22, 2005 from 1:30 p.m. to 5 p.m.

Location: NIH campus, Food and Drug Administration Bldg. 29B, Conference Room C, 8800 Rockville Pike, Bethesda, MD. This meeting will be held by teleconference. The public is welcome to attend the meeting at the above location. A speaker phone will be provided at the specified location for public participation in this meeting. Important information about transportation and directions to the NIH campus, parking, and security procedures is available on the internet at *http://www.nih.gov/about/visitor/index.htm*. Visitors must show two forms of identification such as a Federal employee badge, driver's license, passport, green card, etc. If you are planning to drive to and park on the NIH campus, you must enter at the South Drive entrance of the campus, which is located on Wisconsin Ave. (the medical center metro entrance), and allow extra time for vehicle inspection. Detailed information about security procedures is located at *http://www.nih.gov/about/visitorsecurity.htm*. Due to the limited available parking, visitors are encouraged to use public transportation.

Contact Person: Christine Walsh or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear an overview of the research of the Laboratory of Retroviruses and the Laboratory of Immunoregulation, Division of Viral Products, and the Laboratory of Respiratory and Special Pathogens and the Laboratory of Methods Development and Quality Control, Division of Bacterial Parasitic and Allergenic Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research (CBER), and in closed session will discuss the reports from the Laboratory Site Visits of April 18 and 19, 2005, and June 16, 2005.

Procedure: On September 22, 2005, from 1:30 p.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 15, 2005. Oral presentations from the public will be scheduled between approximately 3 p.m. to 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 15, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On September 22, 2005, from 4 p.m. to 5 p.m. the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss a review of internal research programs in the Office of Vaccines Research and Review, Division of Viral Products and Division of Bacterial Parasitic and Allergenic Products, CBER.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Christine Walsh or Denise Royster (see **CONTACT PERSON**) at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 23, 2005.

Scott Gottlieb,

Deputy Commissioner for Policy.

[FR Doc. 05–17181 Filed 8–29–05; 8:45 am]

BILLING CODE4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities and their Health Professional Shortage Area (HPSA) scores that will receive priority for the assignment of National Health Service Corps (NHSC) personnel (Corps Personnel, Corps members) for the period July 1, 2005 through June 30, 2006, is posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov/resources/fedreg-hpol/.* This list specifies which entities are eligible to receive assignment of Corps members who are participating in the NHSC Scholarship Program, the NHSC Loan Repayment Program, and Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs. Please note that not all vacancies associated with sites on this list will be for Corps members, but could be for individuals serving an obligation to the NHSC through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the Shortage Designation Branch in the National Center for Health Workforce Analysis, Bureau of Health Professions, Health Resources and Services Administration; (2) enter into an agreement with the State agency that administers Medicaid, accept payment under Medicare and the State Children's Health Insurance Program, see all patients regardless of their ability to pay, and use and post a discounted fee plan; and (3) be determined by the Secretary to have (a) A need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; and (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there. Priority in approving applications for assignment of Corps members goes to sites that (1) Provide primary, mental, and/or oral health services to a HPSA of greatest shortage; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a Corps member is not assigned to the entity.

Entities that receive assignment of Corps personnel must assure that (1) The position will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in full-time clinical practice at the approved service location for a minimum of 40 hours per week with at least 32 hours per week in the ambulatory care setting. Obstetricians/gynecologists, certified nurse midwives (CNMs), and family practitioners who practice obstetrics on a regular basis, are required to engage in a minimum of 21 hours per week of outpatient clinical practice. The remaining hours, making up the minimum 40-hour per week total, include delivery and other clinical hospital-based duties. For all Corps personnel, time spent on-call does not count toward the 40 hours per week. In addition, sites receiving assignment of Corps personnel are expected to (1) Report to the NHSC all absences in excess of the authorized number of days (up to 35 work days or 280 hours per contract year); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for NHSC assignees (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report. This system allows the site to assess the age, sex, race/ethnicity of, and provider encounter records for, its user population. The UDS reports are site specific. Providers fulfilling NHSC commitments are assigned to a specific site or, in some cases, more than one site. The scope of activity to be reported in UDS includes all activity at the site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a HPSA with the greatest shortage. For the program year July 1, 2005—June 30, 2006, HPSAs of greatest shortage for determination of priority for assignment of Corps personnel will be defined as follows: (1) Primary care HPSAs with scores of 14 and above are authorized for the assignment of Corps members who are primary care physicians participating in the Scholarship Program; (2) primary care HPSAs with scores of 13 and above are authorized for the assignment of Corps members who are family nurse practitioners (NPs) and physician assistants (PAs) participating in the Scholarship Program; (3) primary care HPSAs with scores of 8 and above are authorized for the assignment of Corps members who are CNMs participating in the Scholarship Program; (4) mental health HPSAs with scores of 20 and above are authorized for the assignment of Corps members who are psychiatrists participating in the Scholarship Program; (5) dental HPSAs with scores of 20 and above are authorized for the assignment of Corps members who are dentists participating in the Scholarship Program; and (6) HPSAs (appropriate to each discipline) with scores of 14 and above are authorized for the assignment of Corps members who are participating in the Loan Repayment Program. HPSAs with scores below 14 will be eligible to receive assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to those HPSAs receiving priority for placement of Corps members through the Loan Repayment Program (*i.e.*, HPSAs scoring 14 or above). Placements made through the Loan Repayment Program in HPSAs with scores 13 or below will be made by decreasing HPSA score, and only to the extent that funding remains available. All sites on the list are eligible sites for individuals wishing to serve in an underserved area but who are not contractually obligated under the Scholarship or Loan Repayment Program. A listing of HPSAs and their scores is posted at *http://belize.hrsa.gov/newhpsa/newhpsa.cfm.*

Sites qualifying for automatic primary care HPSA designations have been scored and may be authorized to receive assignment of Corps members if they meet the criteria outlined above and their HPSA scores are above the stated cutoffs. If there are any sites on the list

with an unscored HPSA designation, they are authorized for the assignment of Corps personnel participating in the Loan Repayment Program only after assignments are made of those Corps members matching to scored HPSAs and only to the extent that funding remains available. When these HPSAs receive scores, these sites will then be authorized to receive assignment of Corps members if they meet the criteria outlined above and their newly assigned scores are above the stated cutoffs.

The number of new NHSC placements through the Scholarship and Loan Repayment Programs allowed at any one site are limited to the following:

(1) Primary Health Care

(a) Loan Repayment Program—no more than 2 physicians (MD or DO); and no more than a combined total of 2 NPs, PAs, or CNMs.

(b) Scholarship Program—no more than 2 physicians (MD or DO); and no more than a combined total of 2 NPs, PAs, or CNMs.

(2) Dental

(a) Loan Repayment Program—no more than 2 dentists and 2 dental hygienists.

(b) Scholarship Program—no more than 1 dentist.

(3) Mental Health

(a) Loan Repayment Program—no more than 2 psychiatrists (MD or DO); and no more than a combined total of 2 clinical or counseling psychologists, licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

(b) Scholarship Program—no more than 1 psychiatrist.

Application Requests, Dates and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including HPSA score, will be removed from the priority listing. Entities interested in being added to the high priority list must submit an NHSC Recruitment and Retention Assistance Application to: National Health Service Corps, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857, fax 301–594–2721. These applications must be submitted on or before the deadline date of March 24, 2006. Applications submitted after this deadline date will be considered for placement on the priority placement list in the following program year. Any changes to this deadline will be posted on the NHSC Web site at *http://nhsc.bhpr.hrsa.gov.*

Entities interested in receiving application materials may do so by calling the HRSA call center at 1–800–221–9393. They may also get information and download application materials from: *http://nhsc.bhpr.hrsa.gov/applications/rraa.cfm.*

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of HPSAs and entities that would receive priority in assignment of Corps members, must do so in writing no later than September 29, 2005. This information should be submitted to: Susan Salter, Chief, Site Identification and Application Branch, Division of National Health Service Corps, 5600 Fishers Lane, Room 8A–08, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities that are receiving priority for the assignment of Corps personnel.

Paperwork Reduction Act: The Recruitment and Retention Assistance Application has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0230.

The program is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: August 23, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–17180 Filed 8–29–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement; Grant to Hebrew Immigrant Aid Society

AGENCY: Office of Refugee Resettlement, Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Award Announcement.

CFDA#: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.576. The title is the Refugee Family Enrichment Program.

Amount of Award: $200,000.

SUMMARY: Notice is hereby given that a noncompetitive single source program expansion supplement to an ongoing competitive award is being made to the Hebrew Immigrant Aid Society (HIAS) to provide additional training and technical assistance to organizations implementing Refugee Marriage Enrichment projects. The application is not within the scope of any existing or expected to be issued program announcement for the Fiscal Year 2006. This application is expected to address issues critical to the development and implementation of marriage education programs for refugees by providing valuable on-site training and technical assistance to grantees and sub-grantees that offer marital communication training to refugee couples.

In September of 2003, ORR awarded HIAS a grant of $200,000 to develop a Refugee Family Enrichment program which included technical assistance to subgrantees. Because of their success in the development of their marriage enrichment program, in 2004 HIAS was awarded a noncompetitive single source program expansion supplement to an ongoing competitive award to expand its Technical Assistance Services Program to Refugee Family Enrichment project sites specified by ORR. HIAS has since provided over 600 hours of technical assistance to project sites operated by organizations across the country. Their technical assistance primarily supports the work of small Mutual Assistance Associations, and without it, these agencies might struggle to provide refugee clients with the programming they need in order to achieve self sufficiency. The proposed project period is September 30, 2005—September 29, 2006.

Technical assistance to support grantees in developing better approaches to the delivery of services provided to refugees is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1522(c)(1)). ACF received one non-substantive comment from a private citizen which did not impact this grant project specifically.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Loren Bussert—(202) 401–4732, *lbussert@acf.hhs.gov.*

Dated: August 24, 2005.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 05–17239 Filed 8–29–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: National Outcome Measures for Substance Abuse Prevention (OMB No. 0930–0230)—Revision

Given SAMHSA's emphasis on reducing burden and limiting required measures, CSAP has proposed a greatly reduced OMB clearance package that would include a small set of required measures. Seven optional measures are also included under this proposed approach and are indicated by an asterisk (*). CSAP would like to characterize this set of measures as the NOMs for prevention. Honoring our agreement with the States, these optional and required NOMs may be modified based upon further dialogue with the States as NOMs implementation proceeds. In addition to requesting approval to collect data using four current GPRA measures (30 day use, age of first use, disapproval, perceived risk), CSAP has added the following:

Abstinence

*Binge Drinking.** Binge drinking is distinct from past 30 day use in that it involves dangerous amounts of alcohol consumption on any given occasion. Binge drinking is a public health concern because it is widespread among young adults and adolescents and contributes directly to injuries and fatalities. Evidence-based prevention strategies, programs, and policies exist to reduce binge drinking, with several programs focusing on binge drinking on college campuses. SAMHSA currently supports a nation-wide underage drinking initiative, which includes a focus on reducing binge drinking among our youth. The NSDUH, Youth Risk Behavior Survey (YRBS), Behavioral Risk Factor Surveillance System (BRFSS) are nearly identical and ask the number of times during the past 30 days that the respondent had five or more drinks on a single occasion or within a couple of hours. The MTF and College Alcohol Study ask the same question, but use the past two weeks as the reference period. The College Alcohol Survey also asks how many times the respondent had four drinks. Given the similarity of these measures, CSAP recommends the NSDUH measure for consistency with our other NOMs.

*Perceived Availability.** Perceived availability of alcohol and illicit drugs is associated with alcohol and illicit drug consumption. Perceived availability is distinct from other NOM correlates of substance use (*e.g.*, perceived risk) because it provides insight into respondents' beliefs regarding environmental conditions that may affect substance use. Efforts to reduce availability (perceived or real) have been shown to reduce consumption and consequences of alcohol and illicit drug use. CSAP recommends including perceived availability because of its strong association with alcohol and illicit drug use correlation with alcohol use = .44; marijuana use = .33) and prevalence in prevention programming. CSAP recommends the NSDUH measure on perceived availability of illicit drugs because data are collected annually and this would be consistent with our other NOM measures (.27–.45 correlation w/ use).

Criminal Involvement

*Antisocial Behavior**. Antisocial/delinquent behavior is predictive of involvement in the criminal justice system and is correlated with substance use. Therefore, it is relevant to measures this construct within this domain, particularly among adolescents who may not yet be involved in the criminal justice system. Antisocial/delinquent behavior is distinct from other NOM constructs (*e.g.*, drug-related crime) in that it addresses a broad set of problem behaviors, rather than a more narrow set of behaviors that result in arrest or adjudication. CSAP recommends including antisocial and delinquent behavior because these behaviors are predictive of involvement in the criminal justice system and are correlated with substance use (alcohol = 23; marijuana = .29). Many evidence-based substance abuse prevention programs target antisocial/delinquent violent behaviors (.23–.375 correlation w/use), especially those for selective and indicated populations. Epidemiologic measures from state and community level sources (AOD related car crashes, police reports on drug related incidents) are not appropriate performance measures for those more targeted, direct service types of programs. This is why we are recommending the survey measures from the NSDUH.

*Alcohol and drug related arrests.** According to the most recent NSDUH survey results "* * * youths in 2003 were more likely to have used an illicit drug in the past month if they carried a handgun (32.5 vs. 10.4 percent), sold illegal drugs (67.0 vs. 9.1 percent), or stolen or tried to steal something worth $50 or more (39.1 vs. 9.9 percent)". Clearly, the relationship between criminal conduct while using substances is an accepted fact. For programs that are targeting risk factors that underlie both substance use and illegal behavior, this is an extremely pertinent performance measure. This NSDUH survey measure is particularly important for programs that are selective or indicated, because the other community level (epidemiological) NOM data will likely not reflect their performance.

Social Support/Social Connectedness (Currently on the NOM Web site as Under Development)

*Community Involvement.** Community involvement is associated with social support and social connectedness and, therefore, is a relevant construct to measure within this domain. For example, increased community involvement was associated with improved family interactions and parent attitude (Substance Abuse Prevention Evaluation Outcomes Fiscal Year 2004, New Mexico Department of Health Publication, October 2004)

CSAP recommends including community involvement because of this relationship. There was discussion about the construct itself and what it means to be involved in one's community. There are a number of ways to measure community involvement, such as participation in many different types of activities, or pursuing a few activities with commitment. In order to keep the data source consistent and be assured of obtaining national and state level data, CSAP recommends the NSDUH prevention measures for assessing actual participation in community activities.

*Collective Efficacy **. Collective efficacy refers to the extent to which community members feel that they monitor their neighborhoods, look after each other, and share common values. Perhaps, because measurement in the area of collective efficacy is fairly new, it was difficult to find data to support or refute the idea that it is associated with substance use. However, it is clearly reflective of the purpose of the Drug Free Communities program, and

CSAP/SAMHSA's philosophical and practical focus regarding coalition building and other empowerment infrastructure activities. Because of its accessibility in the public domain, CSAP recommends the NSDUH measure of collective efficacy as a prevention outcome measure. It has a high reliability (greater than .80) as a cohesive measure.

*Family Communication**. Positive parent-child communication is an objective of family-based prevention interventions. The family is emphasized by this administration, and is ''the anti-drug'' in ONDCP campaigns. Research has shown that family factors play an important role in the etiology of substance abuse, as well as the positive development of children and youth (Spoth, Kavanagh, & Dishion, 2002). In addition, family- and parent-centered prevention interventions have been developed, evaluated, and disseminated in ever increasing numbers during the last decade (*e.g.*, Bauman *et al.*, 2001; Dishion & Kavanagh, 2000; Spoth, Redmond, & Shin, 2001). CSAP recommends the NSDUH items regarding family communications specifically about drug abuse. The NSDUH includes one item for children (During the past 12 months, have you talked with at least one of your parents about the dangers of tobacco, alcohol, or drug use?), and two for parents (During the past 12 months, how many times have you talked with your child about the dangers or problems associated with the use of tobacco, alcohol, or other drugs? Think about the most serious and thorough discussion about drugs you had with your child during the past 12 months. About how long did this discussion last?). These one- and two-item measures have merit for prevention because they ask specifically about conversations regarding ATOD and they are collected annually. (.20–.27 correlation w/use)

CSAP believes that these measures are necessary to include as NOMs based on its long history working with states, communities and prevention providers, and on input from its Data Coordinating Center and outside expert panels who made recommendations based on a review of existing measures using standard criteria. Additionally, we believe that these measures can be collected at the national, state, substate and/or program level as appropriate, providing the consistency of measurement towards which we strive. Additional NOMs epidemiologic measures t are already collected by other agencies and no burden will be posed to SAMHSA/CSAP grantees. The measures will be used as follows:

National/State: Outcome trend measures to identify need and monitor global effectiveness at the population level, for the purpose of informing federal resource allocation decisions.

Community: Outcome trend measures to (1) determine need and target resources to communities at greatest risk, (2) track performance of universal programs and environmental strategies. The data will inform allocation of community resources.

Program: Outcome pre/post measures to assess program performance of direct service programs at the individual program participant level.

Domain	NOM	Data source
Abstinence	30 day substance use: nonuse/reduction in use (1); Age of first use; Perception of disapproval/attitude (1); Perceived risk/harm of use (1); Binge drinking*; Perceived availability*.	NSDUH.
Employment/Education	Workplace AOD use and perception of workplace policy (adult);	NSDUH.
	ATOD-related suspensions and expulsions (youth)	DofED RECORDS.
Crime and Criminal Justice	Alcohol related car crashes and injuries	FARS.
	Drug related crime	UCR.
	Alcohol and drug related arrests*; Antisocial behavior*.	NSDUH.
Stability in Housing	N/A	
Access/Service Capacity	# of persons served by age, gender, race, ethnicity	MDS.
Retention	Total # evidence based programs and strategies	MDS.
Social Support/Social Connectedness	Collective efficacy*; Community Involvement*; Family communication-drug use*.	NSDUH.
Cost Effectiveness	Increase services provided within cost bands (within universal, selective and indicated programs).[1]	Template (under development).
Use of Evidence Based Practices	Total # of evidence based programs and strategies.[1]	MDS.

[1] PART measure.
Notes.—(Other Part measures for CSAP): past year use: BG.
practices reviewed and approved NREP: PRNS.
Percent states satisfied w/TA: BG.

SAMHSA/CSAP program	Number of grantees	Responses/ grantee	Hours/ response	Total hours
FY05				
Knowledge Development:				
Club drugs/Methamphetamine	22	2	3	132
Fetal Alcohol	6	2	3	36
Workplace	13	2	3	78
Targeted Capacity Enhancement:				
HIV/Targeted Capacity	45	2	3	270
SPF SIG	21	2	3	126
FY05 Total	106			642
FY06				
Knowledge Development:				
Club Drugs/Methamphetamine	22	2	3	132

SAMHSA/CSAP program	Number of grantees	Responses/ grantee	Hours/ response	Total hours
Fetal Alcohol	6	2	3	36
Workplace	13	2	3	78
Targeted Capacity Enhancement:				
HIV/Targeted Capacity	45	2	3	270
SPF SIG	40	2	3	240
FY06 Total	126			756
FY07				
Knowledge Development:				
Club Drugs/Methamphetamine	22	2	3	132
Fetal Alcohol	6	2	3	36
Workplace	13	2	3	78
Targeted Capacity Enhancement:				
HIV/Targeted Capacity	45	2	3	270
SPF SIG	50	2	3	300
FY07 Total	136			816
3-Year Annual Average	123			736

Written comments and recommendations concerning the proposed information collection should be sent by September 29, 2005 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC. 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 23, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–17178 Filed 8–29–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22234]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) and its Liftboat III Subcommittee will meet to discuss various issues relating to offshore safety and security. Both meetings will be open to the public.

DATES: NOSAC will meet on Thursday, October 6, 2005, from 9 a.m. to 3 p.m. The Liftboat III Subcommittee will meet on Wednesday, October 5, 2005, from 1:30 p.m. to 3 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 22, 2005. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 22, 2005.

ADDRESSES: NOSAC will meet in ''Ballroom C/D'' of the Hilton New Orleans Airport hotel, 901 Airline Drive, Kenner, Louisiana. The Liftboat III Subcommittee will meet in the ''Segnette'' room of the same hotel. Send written material and requests to make oral presentations to Commander J. M. Cushing, Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Commander J. M. Cushing, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–1082, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of the meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

National Offshore Safety Advisory Committee. The agenda includes the following:

(1) Report on issues concerning the International Maritime Organization and the International Organization for Standardization.

(2) Report from Subcommittee on Safety of Life at Sea (SOLAS) compliance of U.S. flagged Offshore Support Vessels including Liftboats.

(3) Report from the Liftboat III Subcommittee on Liftboat Licenses.

(4) Offshore Helidecks—new and revised API and ICAO standards.

(5) Revision of 33 CFR Chapter I, Subchapter N, Outer Continental Shelf activities.

(6) 33 CFR Chapter I, Subchapter NN, Temporary Final Rule on Deepwater Ports, and status of license submissions for LNG deepwater ports.

Liftboat III Subcommittee. The agenda includes the following:

(1) Review and discuss previous work.

(2) Review Offshore Marine Service Association (OMSA) Liftboat Training outline.

(2) Review Final Report of answers to NOSAC Task Statement on Liftboat Licensing.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than September 22, 2005. Written material for distribution at the meeting should reach the Coast Guard no later than September 22, 2005. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than September 22, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the

meeting, contact the Executive Director as soon as possible.

Dated: August 24, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–17214 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD07–05–114]

Implementation of Sector Jacksonville

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the establishment of Sector Jacksonville. The Sector Jacksonville Commanding Officer will have the authority, responsibility and missions of a Group Commander, Captain of the Port (COTP) and Commanding Officer, Marine Safety Office (MSO). The Coast Guard has established a continuity of operations order whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official and/or document.

DATES: The effective date of the sector establishment is August 16, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–05–114 and are available for inspection or copying at Commander, Seventh Coast Guard District, Resources, 9th Floor, 909 SE 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Michael Jackson, Seventh District Resources Division at 305–415–6706.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

This notice announces the establishment of Sector Jacksonville. Upon creation of Sector Jacksonville, Group Mayport and MSO Jacksonville will be incorporated into the Sector and no longer exist as specific entities. Sector Jacksonville will be composed of a Response Department, Prevention Department, and Logistics Department. All existing missions and functions performed by Group Mayport and MSO Jacksonville should be realigned under this new organizational structure as of August 16, 2005.

Sector Jacksonville is responsible for all Coast Guard missions in the Jacksonville marine inspection zone, COTP zone, and Area of Responsibility (AOR). A continuity of operations order has been issued to address existing COTP regulations, orders, directives and policies.

Sector Jacksonville is responsible for all Coast Guard missions within the following zone beginning at the Georgia coast at 30–50.00N latitude; thence west to 30–50.00N latitude, 082–15.00W longitude; thence south to the intersection of the Florida-Georgia boundary at 082–15.00W longitude; thence westerly along the Florida-Georgia boundary to 083–00.00W longitude; thence southeasterly to 28–00.00N latitude, 081–30.00W longitude; thence east to the sea along 28–00.00N latitude. The offshore boundary starts at the coast at 30–50.00N latitude; thence proceeds easterly to the outermost extent of the exclusive economic zone (EEZ); thence southerly along the outermost extent of the EEZ to 28–00.00N latitude; thence westerly along 28–00.00N latitude to the coast. All coordinates referenced use North American Datum 1983 (NAD 1983).

The Sector Jacksonville Commander is vested with all rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer, Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officer, Marine Safety Office Jacksonville and the Commander, Group Mayport. The Sector Jacksonville Commander shall be designated: (a) COTP for the zone described in 33 CFR 3.35–20; (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On Scene Coordinator (FOSC) for the zone described in 33 CFR 3.35–20, consistent with the national contingency plan; (d) Officer In Charge of Marine Inspection (OCMI) for the zone described in 33 CFR 3.35–20. The Deputy Sector Commander may be designated alternate COTP, FMSC, FOSC, and Acting OCMI.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones.

Name: Sector Jacksonville.

Addresses: Commander, U.S. Coast Guard Sector Jacksonville, 4800 Ocean Street, Atlantic Beach, FL 32211.

Contact: Operations Center (Emergency): (904) 564–7511, (904) 247–7311. Sector Commander: (904) 564–7501. Deputy Sector Commander: (904) 564–7501. Chief, Response Department: (904) 564–7537. Chief, Logistics Department: (904) 564–7539. Chief, Prevention Department: (904) 564–7565.

Dated: August 15, 2005.

D.B. Peterman,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–17158 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–05–050]

Implementation of Sector New Orleans

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the stand-up of Sector New Orleans. The creation of Sector New Orleans is an internal reorganization to combine Group New Orleans, Marine Safety Office New Orleans, and Marine Safety Office Morgan City into one command. The Coast Guard has established a continuity of operations whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official and/or document.

DATES: This change is effective August 19, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD08–05–050 and are available for inspection or copying at Commander (rpl), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael Roschel, Eighth District Planning Office at 504–589–6293.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

Sector New Orleans is located at 201 Old Hammond Highway, Metairie, LA 70005 and contains a single Command Center. Sector New Orleans is composed of a Response Department, Prevention Department, and Logistics Department. All existing missions and functions performed by Group New Orleans, Marine Safety Office New Orleans and Marine Safety Office Morgan City (and subordinate units) will be performed by Sector New Orleans. Effective August 19, 2005, Group New Orleans, Marine Safety Office New Orleans and Marine

Safety Office Morgan City no longer exist as organizational entities. However, Marine Safety Office Morgan City is renamed Marine Safety Unit Morgan City and reports directly to the Sector New Orleans Commander. Marine Safety Unit Houma will remain a subunit of Marine Safety Unit Morgan City and will report directly to Marine Safety Unit Morgan City. Marine Safety Unit Baton Rouge will report to Sector New Orleans Deputy Sector Commander. Sector New Orleans consists of two sub-zones. The Commander, Sector New Orleans will have overall responsibility for all Coast Guard missions in these zones. The sub-zones are the New Orleans Sub-Zone and MSU Morgan City Sub-Zone.

New Orleans Sub-Zone starts at 28°50′ North latitude, 088°00′ West longitude; thence north along longitude 088°00′ West to latitude 29°10′ North; thence northwesterly to the Mississippi coast at 89°10′ West longitude; thence north to the northern Harrison County Boundary; then westerly along the north Harrison County boundary; thence northerly along the western boundaries of Stone, Forrest, Jones, Jasper, Newton, Neshoba, Winston, Choctaw, and Webster counties to the northern boundary of Montgomery County; then southwesterly along the northern and western boundaries of Montgomery, Carroll, Holmes, Humphreys, Sharkey, and Issaquena Counties to the Louisiana-Arkansas boundary; thence west along the Louisiana-Arkansas boundary to the Texas-Louisiana boundary; thence south along the Texas-Louisiana boundary to the northern DeSoto Parish boundary; thence easterly along the northern and eastern boundaries of DeSoto, Sabine, Vernon and Allen Parishes; thence east along the northern boundaries of Acadia, Lafayette, St. Martin, Iberia, Assumption and Lafourche Parishes to 29°18′ North latitude, 090°00′ West longitude; thence southeast to 28°50′ North latitude, 089°27′06″ West longitude; thence east to 88°00′ West longitude.

MSU Morgan City Sub-zone starts at latitude 28°50′ North and longitude 088°00′ West; thence proceeds west to 28°50′ North latitude, 089°27′06″ West longitude; thence northwesterly to 29°18′ North latitude, 090°00′ West longitude; thence northwesterly along the northern boundaries of Lafourche, Assumption, Iberia, and St. Martin Parishes; thence northwesterly along the northern boundary of Lafayette and Acadia Parishes to 092°23′ West longitude; thence south along 092°23′ West longitude to the outermost extent of the EEZ; thence easterly along the outermost extent of the EEZ to 088°00′ West longitude; thence north to 28°50′ North latitude, 088°00′ West longitude.

These sub-zones will be modified in the future upon the stand-up of adjoining sectors. Notice of this change will be published in the **Federal Register**.

The Sector New Orleans Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer Marine Safety Office, as provided for in Coast Guard regulations, with the exception of specific authorities that shall be retained by MSU Morgan City. The Sector New Orleans Commander is the successor in command to the Commanding Officers of Group New Orleans, Marine Safety Office New Orleans and Marine Safety Office Morgan City. The Sector New Orleans Commander is designated for the entire Sector as: (a) Federal On Scene Coordinator (FOSC), consistent with the National Contingency Plan; and (b) Search and Rescue Mission Coordinator (SMC). Also, the Sector New Orleans Commander is designated for the entire Sector except for the MSU Morgan City Sub-Zone as: (a) Captain of the Port (COTP); (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On Scene Coordinator (FOSC) consistent with the National Contingency Plan; and (d) Officer in Charge of Marine Inspection (OCMI). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC and Acting OCMI.

The Commanding Officer, Marine Safety Unit Morgan City is designated for the entire MSU Morgan City Sub-Zone as: (a) Captain of the Port (COTP); (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On Scene Coordinator (FOSC) consistent with the National Contingency Plan; and (d) Officer in Charge of Marine Inspection (OCMI). The Executive Officer, Marine Safety Unit Morgan City is designated alternate COTP, FMSC, FOSC, and Acting OCMI for the sub-zone.

A continuity of operations order has been issued ensuring that all previous Group New Orleans, Marine Safety Office New Orleans and Marine Safety Office Morgan City practices and procedures will remain in effect until superseded by Commander, Sector New Orleans or, in MSU Morgan City Sub-Zone, until superseded by Commanding Officer, Marine Safety Unit Morgan City. This continuity of operations order addresses existing COTP regulations, orders, directives and policies.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector New Orleans.

Address: Commander, U.S. Coast Guard Sector New Orleans, 201 Old Hammond Highway, Metairie, LA 70005.

Contact: General Number, (504) 846–6184, Sector.

Commander: Captain Frank Paskewich; Deputy Sector.

Commander: Captain Robert Mueller.

Chief, Prevention Department: Commander Joseph Paradis (504) 589–6196 extension 232; Chief, Response Department: Commander Gregory Stump (504) 846–6184; Chief, Logistics Department: Commander Kim Croke (504) 589–6196 extension 365.

MSU Morgan City General Number, (985) 380–5305.

Dated: August 16, 2005.

Kevin L. Marshall,

Captain, U.S. Coast Guard, Acting Commander Eighth Coast Guard District.

[FR Doc. 05–17207 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1595–DR]

Florida; Amendment No. 7 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1595–DR), dated July 10, 2005, and related determinations.

DATES: Effective Date: August 19, 2005.

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 Florida 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 July 10, 2005:

Jackson County for Public Assistance [Categories C-G] (already designated for Public Assistance [Categories A and B], including direct Federal assistance. For a period of up to 72 hours, assistance for

emergency protective measures, including direct Federal assistance, was provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excluded debris removal.)

(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)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–17170 Filed 8–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1591–DR]

Maine; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maine (FEMA–1591–DR), dated June 29, 2005, and related determinations.

DATES: *Effective Date:* August 10, 2005.

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 Maine 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 June 29, 2005:

Aroostook County for Public Assistance.

(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)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–17169 Filed 8–29–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Confederated Tribes of the Warm Springs Reservation of Oregon Proposed Trust Acquisition and Resort and Casino Project, Cascade Locks, Hood River County, OR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, in cooperation with the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes), intends to prepare an Environmental Impact Statement (EIS) for a proposed 25-acre trust acquisition and resort and casino project, including transportation system improvements, to be located within the city of Cascade Locks, Hood River County, Oregon. Other cooperating agencies include the Oregon Department of Transportation, the city of Cascade Locks, the port of Cascade Locks, Hood River County and, because of proposed transportation system improvements to Interstate 84, the Federal Highway Administration. The purpose of the proposed action is to improve the economy of the Tribes and help their members attain economic self-sufficiency. This notice also announces public scoping meetings to identify potential issues and alternatives to be considered in the EIS.

DATES: Written comments on the scope of the EIS or implementation of the proposal must arrive by September 30, 2005.

Public scoping meetings will be held on the following dates and times:

1. September 15, 2005, 6 p.m. to 8:30 p.m., Cascade Locks, Oregon.
2. September 17, 2005, 9:30 a.m. to 12:00 p.m., Cascade Locks, Oregon.
3. September 19, 2005, 5 p.m. to 8 p.m., Portland, Oregon.
4. September 21, 2005, 6 p.m. to 8:30 p.m., Hood River, Oregon.
5. September 28, 2005, 6 p.m. to 8:30 p.m., Stevenson, Washington.

ADDRESSES: You may mail or hand carry written comments to Ms. June Boynton, Environmental Protection Specialist, Division of Environment, Safety, and Cultural Resources Management, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, Oregon 97232. You may also fax your comments to (503) 231–6791, or submit them electronically at the project Web site, *www.gorgecasinoEIS.com.* (Note: BIA cannot receive electronic comments directly via e-mail at this time.) Please include your name, return address, and the caption, ''DEIS Scoping Comments, Confederated Tribes of the Warm Springs Reservation of Oregon Trust Acquisition and Resort/Casino Project,'' on the first page of your written comments.

The locations of the public scoping meetings are as follows:

1. Cascade Locks—Port of Cascade Locks Gorge Pavilion, Marine Park, 355 Wa-Na-Pa Street, Cascade Locks, Oregon.
2. Cascade Locks—Port of Cascade Locks Gorge Pavilion, Marine Park, 355 Wa-Na-Pa Street, Cascade Locks, Oregon.
3. Portland—Benson High School Cafeteria, 546 NE 12th Avenue, Portland, Oregon.
4. Hood River—Hood River Inn, 1108 East Marina Way, Hood River, Oregon.
5. Stevenson—Rock Creek Center, 710 SW Rock Creek Drive, Stevenson, Washington.

FOR FURTHER INFORMATION CONTACT: June Boynton, (503) 231–6749.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs is considering the Tribes' application for 25 acres of land to be taken into trust for the development of gaming and related entertainment facilities. The 25 acres proposed for trust acquisition are part of a 60-acre tract located at the eastern edge of the city of Cascade Locks in Hood River County, Oregon.

The EIS will include an evaluation of alternatives for meeting the proposed facilities' access needs from Interstate 84. The transportation analysis will include all reasonable alternatives for access from Interstate 84, including modifying or eliminating the existing partial interchanges known as Herman Creek Interchange and East Cascade Locks Interchange. The EIS will also analyze a new interchange at Forest Lane. Although the eventual size and scope of the facilities may be modified based on information obtained through

the EIS process, the Tribes' current proposal for the new gaming facility, on acquired trust land, would have a 90,000-square-foot gaming floor connected to retail shops, dining venues, and a 250-room hotel and spa. The facility would provide parking for 3,600 vehicles, including a parking garage and spaces for oversized vehicles. The proposed action encompasses the various federal approvals required to implement the Tribes' fee-to-trust application. Areas of environmental concern identified so far for analysis in the EIS include water resources, air quality, biological resources, cultural resources, socioeconomic conditions, traffic and transportation, land use, public utilities and services, noise, lighting, hazardous materials, environmental justice, and visual resources/aesthetics. The range of issues and alternatives to be addressed in the EIS may be expanded based on comments received in response to this notice and at the public scoping meetings.

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 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 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 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 8.1.

Dated: August 3, 2005.

Debbie L. Clark,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–17167 Filed 8–29–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–300–1330–EO]

Notice of a 30-Day Public Comment Period To Affirm the Policy for the Standards To Establish the Potash Enclave as Used To Administer the Secretarial Order of 1986 Entitled ''Oil and Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico''

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice solicits public comments on the report which affirms the existing policy on the criteria used to establish the potash enclave.

DATES: Comments should be submitted to the address below no later than September 29, 2005.

ADDRESSES: Written comments should be addressed to Group Manager, Solid Minerals, 1620 L. St. NW., Mail Stop 501 LS, Washington DC 20036.

FOR FURTHER INFORMATION CONTACT: David Stewart, Mining Engineer, 1620 L. St. NW., Mail Stop 501 LS, Washington, DC 20036, telephone (202) 452–0310.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI) has a long history of administering the concurrent development of the oil and gas and potash deposits owned by the United States in Eddy and Lea counties, New Mexico. The BLM is the agency within the DOI responsible for these activities. There is an interest in exploring for oil and gas in parts of the area containing the potash reserves (potash enclave). The Secretarial Order (SO), published in the **Federal Register** dated October 28, 1986 entitled, ''Oil and Gas and Potash Development within the Designated Potash Area of Eddy and Lea Counties,'' was developed to administer the development of these resources.

The order, in Yates Petroleum Corp., et al., IBLA No. 92–612, was issued pursuant to an appeal filed by Yates Petroleum Corp., et al. concerning decisions to deny the approval to drill certain oil and gas wells by the BLM pursuant to the SO. In her opinion, the Administrative Law Judge stated, ''The record does not support a conclusion that the standards of four (4) feet of 10 percent K_2O as sylvite and four (4) feet of 4 percent K_2O as langbeinite, or a combination of the two, as defined by Van Sickle in 1974, continue to identify the thickness and quality of potash which is mineable under existing technology and economics'' as required by the SO. The BLM has the same concerns and prepared the report referenced in this notice.

II. Report, Entitled ''Potash Enclave Mineral Report''

The report may be viewed at the following site on the Internet, *http://www.blm.gov/nhp/300/wo320/potash.pdf*. A hard copy may be requested from the contact for further information above.

Thomas Lonnie,

Assistant Director, Minerals, Realty and Resource Protection.

[FR Doc. 05–17176 Filed 8–29–05; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0063

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR part 870 and the OSM–1 Form. This collection consolidates the requirements for all of part 870, including the provisions for excess moisture deductions previously approved by the Office of Management and Budget (OMB) under control number 1029–0090.

DATES: Comments on the proposed information collection must be received by October 31, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection package, including

explanatory information and related forms, contact John A. Trelease at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 869, Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and the form it implements, the OSM–1, Coal Reclamation Fee Report. This request consolidates these requirements with the excess moisture deduction provisions found in § 870.18, approved separately by OMB under control number 1029–0090.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden and respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activities:

Title: Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, 30 CFR 870.

OMB Control Number: 1029–0063.

Summary: The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of P.L. 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee.

Bureau Form Number: OSM–1.

Frequency of Collection: Quarterly.

Description of Respondents: Coal mine permittees.

Total Annual Responses: 11,192.

Total Annual Burden Hours: 2,462.

Dated: August 24, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–17187 Filed 8–29–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–302 and 731–TA–454 (Second Review)]

Fresh and Chilled Atlantic Salmon From Norway

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

DATES: *Effective Date:* August 23, 2005.

FOR FURTHER INFORMATION CONTACT: John Kitzmiller (202–205–3387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*http://www.usitic.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitic.gov.*

SUPPLEMENTARY INFORMATION: On June 20, 2005, the Commission established a schedule for the conduct of the subject five-year reviews (70 FR 36947, June 27, 2005). The Commission hereby gives notice that it is revising the schedule for its final determinations in the subject five-year reviews.

The Commission's schedule is revised as follows: The prehearing staff report will be placed in the nonpublic record on September 29, 2005; the deadline for filing prehearing briefs is October 11, 2005; requests to appear at the hearing should be filed with the Secretary to the Commission on or before October 12, 2005; the prehearing conference will be held on October 14, 2005; the hearing will be held on October 20, 2005; posthearing briefs are due October 31, 2005; the closing of the record and final release of information is November 22, 2005; and final comments on this information are due on or before November 28, 2005. In addition, final party comments concerning only Commerce's final results on its sunset review of the antidumping duty order on fresh and chilled Atlantic salmon from Norway are due three business days after the issuance of Commerce's results.

For further information concerning these review investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 24, 2005.

Marilyn R. Abbot,

Secretary to the Commission.

[FR Doc. 05–17164 Filed 8–29–05; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–841 (Review)]

Certain Non-Frozen Concentrated Apple Juice From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on certain non-frozen concentrated apple juice from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on certain non-frozen concentrated apple juice from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E and F (19 CFR part 207).

EFFECTIVE DATES: Effective Date: August 5, 2005.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888 or

joanna.lo@usitc.gov), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter 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 (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On August 5, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 22694, May 2, 2005) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 31, 2005, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review, may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before September 6, 2005, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by September 6, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: August 24, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–17174 Filed 8–29–05; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by Naumes Concentrates, Inc. and Tree Top, Inc. to be adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Mobile Alliance

Notice is hereby given that, on May 12, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Open Mobile Alliance (''OMA'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 7 Layers AG, Ratingen, GERMANY; ACL Wireless, New Delhi, INDIA; Action Engine Corp., Redmond, WA; Adamind, Ra'anana, ISRAEL; Agere Systems Inc., Naperville, IL; Airwide Solutions Inc., Longueuil, Quebec, CANADA; Akumiitti, Helsinki, FINLAND; ALLTEL Communications, Inc., Little Rock, AR; Alterbox, Budapest, HUNGARY; Amplefuture Ltd., London, UNITED KINGDOM; Andrew Corporation, Ashburn, VA; Arasan Chip Systems Inc., San Jose, CA; AtomiZ S.A., Paris, FRANCE; Atsana Semiconductor, Ottawa, Ontario, CANADA; Auto TOOLS Group Co., Ltd., Taipei, TAIWAN; Bamboo MediaCasting, Kfar-Saba, ISRAEL; Beijing ZRRT Communications Technology Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; BorderWare Technologies Inc., Mississauga, Ontario, CANADA; Broadcom Corporation, Irvine, CA; Bytemobile, Inc., Mountain View, CA; Cambridge Positioning Systems Ltd., Cambridge, UNITED KINGDOM; Cellular GmbH, Hamburg, GERMANY; Celtius Oy, Helsinki, FINLAND; China Telecommunications Corporation, Beijing, PEOPLE'S REPUBLIC OF CHINA; China United Telecommunications Corporation, Beijing, PEOPLE'S REPUBLIC OF CHINA; Clickatell Ltd., Bellville, SOUTH AFRICA; ComEase Pte Ltd., Singapore, SINGAPORE; Communications Global Certification Inc., Tao-Yuan, TAIWAN; Connect Technologies Corporation, Tokyo, JAPAN; Consistec Engineering & Consulting, Saarbrucken, GERMANY; Core Mobility, Mountain View, CA; Cryptico A/S, Copenhagen, DENMARK; Danger, Inc., Palo Alto, CA; Darts Technologies Corporation, Chung Ho, TAIWAN; Dascom Technology, Beijing, PEOPLE'S REPUBLIC OF CHINA; Dittosoft Inc., Daegu, REPUBLIC OF KOREA; Dream Soft Co., Ltd., Daegu, REPUBLIC OF KOREA; DxO Labs, Boulogne, FRANCE; Eigel-Danielson, Monument, CO; Elcoteq Network Corporation, Salo, FINLAND; Electric Pocket, Pontyneryneydd, Torfaen, UNITED KINGDOM; Elisa, Elisa, FINLAND; EMCC Software Ltd., Manchester, UNITED KINGDOM; Emirates Telecommunications Corporation, Abu Dhabi, UNITED ARAB EMIRATES; End2End Mobile, Aalborg SV, DENMARK; ETS Dr. Genz GmbH, Reichenwalde, GERMANY; EXPWAY, Paris, FRANCE; FEELingk Co. Ltd., Seoul, REPUBLIC OF KOREA; Finjurdata, Rotkreuz, SWITZERLAND;

Finnish Communications Regulatory Authority, Helsinki, FINLAND; Firsthop, Helsinki, FINLAND; Flash Newtworks, Herzlia, ISRAEL; Flextronics, Espoo, FINLAND; Fraunhofer Institut, Ilmenau, GERMANY; Freescale Semiconductor, Austin, TX; Funambol, Pavia, ITALY; Fusionsoft Co., Ltd., Daegu, REPUBLIC OF KOREA; Future Dial, Inc., Sunnyvale, CA; Gemini Mobile Technologies, Inc., San Mateo, CA; GeoTrust, Apharetta, GA; Greentube I.E.S. AG, Vienna, AUSTRIA; Hanmaro Co. Ltd., Seoul, REPUBLIC OF KOREA; Humit Co. Ltd., Seoul, REPUBLIC OF KOREA; IC3S Information, Computer and Solartechnik AG, Quickborn, GERMANY; Indagon, Helsinki, FINLAND; Ind-TeleSoft Private Limited, Koramangala, Bangalore, INDIA; Industrial Technology Research Institute, Hsinchu, TAIWAN; Infocity, Inc., Tokyo, JAPAN; Infraware, Seoul, REPUBLIC OF KOREA; Inka Entworks, Seoul, REPUBLIC OF KOREA; INNOACE Ltd., Seoul, REPUBLIC OF KOREA; InnoPath Software, Alviso, CA; INNVO Systems, Singapore, SINGAPORE; Institut for Rundfunktechnik, Munich, GERMANY; InterOP Technologies, LLC, Fort Myers, FL; IntroMobile Co., Ltd., Seoul, REPUBLIC OF KOREA; ipNetfusion, Richardson, TX; Irdeto Access B.V., Ka Moofodorp, NETHERLANDS; IXI Mobile, Inc., Ra′anana, ISRAEL; Jabber, Inc., Denver, CO; Kayak Interactive, Princeton, NJ; Kodiak Networks, San Ramon, CA; License Management International, LLC, Morgan Hill, CA; Locus Technologies, Seoul, REPUBLIC OF KOREA; Macrospace Limited, London, UNITED KINGDOM; MarkAny Inc., Seoul, REPUBLIC OF KOREA; Matchtip Limited, London, UNITED KINGDOM, Matrix Memory, Santa Clara, CA; Mobeon, Sundsvall, SWEDEN; Mobileleader, Seoul, REPUBLIC OF KOREA; MobileSoft Technology Co. Ltd., Nanjing, PEOPLE'S REPUBLIC OF CHINA; Mobilethink A/S, Arthus, DENMARK; MobileTop Co., Ltd., Seoul, REPUBLIC OF KOREA; Mobilkom Austria AG & Co. KG, Vienna, AUSTRIA; Mobivillage, Marseille, FRANCE; M–Systems Flash Disk Pioneers, Kfar Saba, ISRAEL; MtekVision Co. Ltd., Seoul, REPUBLIC OF KOREA; MTIS Co. Ltd., Daegu, REPUBLIC OF KOREA; NAGRAVISION, Cheseaux, SWITZERLAND; Navitime Japan Co., Ltd., Tokyo, JAPAN; NDS Israel, Jerusalem, ISRAEL; NeuStar Inc., Sterling, VA; NS Solutions Corporation, Tokyo, JAPAN; Nvision SA, Luxembourg, GERMANY; O3SIS Information Technology AG, Overath, GERMANY; Obexcode AS, Tromso, NORWAY; Optenet S.A., Madrid, SPAIN; Orative Corporation, San Jose, CA; Oxy Systems, Cambridge, MA; Pixel Technologies, Tel Aviv, ISRAEL; Polaris Wireless, Santa Clara, CA; Pollex Mobile Software Co. Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Purple Labs, Le Bourget de Lac, FRANCE; PurpleACE, Singapore, SINGAPORE; Quanta Computer Inc., Tao Yuan Shien, TAIWAN; Racal Instruments Wireless Solutions Ltd., Slough, UNITED KINGOM; Renesas Technology Corp., Chiyoda-ku, Tokyo, JAPAN; Rohde & Schwarz GmbH & Co. KG, Munich, GERMANY; Roundbox, Inc., Bridgewater, NJ; Sandisk, Sunnyvale, CA; Savaje Technologies, Chelmsford, MA; SCA Technica, Inc., Nashua, NH; Seoul Commtech Co. Ltd., Seoul, REPUBLIC OF KOREA; Setcom Wireless Products GmbH, Munich, GERMANY; Sicap, Koeniz, SWITZERLAND; Sky MobileMedia, San Diego, CA; Smartfone Limited, North Point, HONG KONG; Spansion, Sunnyvale, CA; Sporton International Inc., TaoYuan Hsien, TAIWAN; Spreadtrum Communications Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Streamezzo, Paris, FRANCE; Swapcom, Lyon, FRANCE; Symbol Technologies, Inc., San Jose, CA; Synchronica Software GmbH, Berlin, GERMANY; Tactel AB, Jonkoping, SWEDEN; TAO Group, Reading, UNITED KINGDOM; TCL & Alcatel Mobile Phones, Colombes Cedex, FRANCE; Telematica Instituut, An Enschede, NETHERLANDS; Thin Multimedia, Inc., Seoul, REPUBLIC OF KOREA; TRA Telecommunications Research Associates, Glen Ellyn, IL; Tridea Works, LLC, Chantilly, VA; UK Department of Trade and Industry, London, UNITED KINGDOM; UniqMinds Ltd., Helsinki, FINLAND; University of Wollongong, Wollongong, AUSTRALIA; UTStarcom, Inc., Alameda, CA; Viaccess SA, Paris, FRANCE; VIDA Software, S.L., Barcelona, SPAIN; Vidiator, Bellevue, WA; Vigyana, Santa Clara, CA; Vimicro Corporation, Beijing, PEOPLE'S REPUBLIC OF CHINA; Vimio AB, Umea, SWEDEN; Volantis Systems, Ltd., Guildford, Surrey, UNITED KINGDOM; Waterford Institute of Technology, Waterford, IRELAND; Widevine Technologies, Inc., Seattle, WA; Wipro Limited, Kamataka, INDIA; Wireless Technologies Oy, Espoo, FINLAND; Wireless Zeta Telecommunicaciones, S.L., Sanse, SPAIN; Wisegram Inc., Seoul, REPUBLIC OF KOREA; Wmode Inc., Calgary, Alberta, CANADA; XCE Co. Ltd., Seoul, REPUBLIC OF KOREA; Xiam Limited, Dublin, IRELAND; and Xiamen Scan Technology Co. Ltd., Xiamen, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

Also, 4thpass Inc., Seattle, WA; Accenture, Chicago, IL; Agilemobile.com Co. Ltd., Bangkok, THAILAND; Amdocs, Limmasol 3307, CYPRUS; Amdocs Ltd., Ra'anana, ISRAEL; AQRIS Software AS, Tallinn, ESTONIA; AT&T Wireless Services, Redmond, WA; Atchik, Toulous, FRANCE; Autodesk Location Services, San Rafel, CA; Bechtel Telecommunications, Frederick, MD; Beijing Cathyshy Digit-Fun Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Beijing Haui Network Technology Co. Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Bellwave Co., Ltd., Seoul, REPUBLIC OF KOREA; BlueFactory, Stockholm, SWEDEN; Boompoint Wireless Solutions, Bellevue, WA; Borland Software Corporation, Scotts Valley, CA; Bosch, Stuttgart, GERMANY; Camelot Group plc, Watford, Herts, UNITED KINGDOM; Cap Gemini Ernest & Young, Paris, FRANCE; Casabyte Inc., Renton, WA; Catalytic Software Ltd., Hyderabad, INDIA; Charles Schwab & Co., Inc., San Francisco, CA; Chunghwa Telecom Co., Ltd. Mobile Business Group, Taipei City, TAIWAN; Consero ApS, Aalborg, DENMARK; Consilient Technologies Corporation, St. John's, Ontario, CANADA; Contect Innovations Inc., Port Coquitlam, British Columbia, CANADA; Critical Path, Inc., San Francisco, CA; Deccanet Designs Ltd., Bangalore, INDIA; DHL Worldwide Network NV/SA, Diegem-Machelen, BELGIUM; DigiCAPS, Seoul, REPUBLIC OF KOREA; Digital World Services, New York, NY; DoOnGo Technologies, Inc., Santa Clara, CA; E28 (Shanghai) Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; elata Ltd., Poole, Dorset, UNITED KINGDOM; Elvior, Tallinn, ESTONIA; Emblaze Systems, Ra'anana, ISRAEL; Empower Interactive Group, Ltd., London, UNITED KINGDOM; Enea Data AB, Taby, SWEDEN; Exit Games GMBH, Hamburg, GERMANY; EZOS, Braine-L'alleud, BELGIUM; FarEasTone Telecommunications Co., Ltd., Taipei Hsien, TAIWAN; Fasoo.com Co., Ltd., Seoul, REPUBLIC OF KOREA; Fenestrae B.V., The Hague, NETHERLANDS; France Telecom Group, Paris, FRANCE; Fraunhofer Institute SIT, Darmstadt, GERMANY; Glenayre Electronics, Duluth, GA; Global Consulting Touch Iberica, S.L., Madrid, SPAIN; Green Cathedral plc, Westwick, Cambridge, UNITED KINGDOM; Harbottle & Lewis, London, UNITED KINGDOM; iaSolution Inc., Taipei, TAIWAN; Idetic, Inc.,

Berkeley, CA; IGEL Co., Ltd., Tokyo, JAPAN; Incomit AB, Karlstad, SWEDEN; Infobank Corporation, Seoul, REPUBLIC OF KOREA; Infovide, Warsaw, POLAND; Invertix Corporation, Annandale, VA; JP Mobile, Inc., Dallas, TX; July Systems, Inc., Sunnyvale, CA; Kada Systems, Inc., Burlington, MA; K–Mobile, Paris, FRANCE; Korea Information Security Agency, Seoul, REPUBLIC OF KOREA; Kuulalaarkeri Oy, Turka, FINLAND; Liteon Technology, Taipei Hsien, TAIWAN; Lockstream Corporation, Bellevue, WA; Mediachorus Inc., Seoul, REPUBLIC OF KOREA; Melodeo, Inc., Hammersmith, UNITED KINGDOM; Meridea Financial Software Oy, Helsinki, FINLAND; Miranet AB, Tyres, SWEDEN; MiTAC International Corp., Taipei, TAIWAN; MobiLab Co., Ltd., Daegu, REPUBLIC OF KOREA; Mobile GIS Ltd., Glanmire-Country Cork, IRELAND; Mobile www, LLC, Boca Raton, FL; MobileIQ Information Technologies, Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; Mobile-Mind, Inc., Watertown, MA; Mobitek Communication Corp., Taipei, TAIWAN; Mobitel D.D., Ljubigana, SLOVENIA; MoCore Mobile Software Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Netsize, Paris, FRANCE; Newbay Software, Dublin, IRELAND; NextGen Media Alliance, New Delhi, INDIA; Nordea Bank, Nordea-Merita, FINLAND; Northstram AB, Stockholm, SWEDEN; Novell Inc., San Jose, CA; Open Bit Oy Ltd., Tampere, FINLAND; ParthusCeva, Inc., San Jose, CA; Partner Communications Company Ltd., Rosh Ha'ayin, ISRAEL; P–Cube Ltd., Herzliya, ISRAEL; Peramon Technology Ltd., Reading, UNITED KINGDOM; PictureIQ Corporation, Seattle, WA; Pixo, Inc., San Jose, CA; Plastixense AB, Maimo, SWEDEN; Radiolinja Oy, Espo, FINLAND; Radvision, Tel Aviv, ISRAEL; Real Networks, Inc., Seattle, WA; Reaxion Corporation, Seattle, WA; Reliance Infocomm Limited, Navi Mumbai, INDIA; Sanyo Electric Co., Ltd., Oaka, JAPAN; Sarnoff Corporation, Princeton, NJ; SealTronic Technology, Inc., Seoul, REPUBLIC OF KOREA; Sharp Robot Inc., Toronto, Ontario, CANADA; Sierra Wireless, Richmond, British Columbia, CANADA; Simbit Corporation, Ottawa, Ontario, CANADA; Sinpag, Saint Maur des Fosses, FRANCE; SMART Communications, Inc., Makati City, PHILIPPINES; Smart Fusion SAS, Mougins Sedex, FRANCE; Spontaneous Technology, Salt Lake City, UT; Standard Inside Ltd., Holon, ISRAEL; StarHub Pte Ltd., Singapore, SINGAPORE; SupportSoft Inc., Redwood City, CA; Technonia Inc., Seoul, REPUBLIC OF KOREA; Tecnosistemas, San Pedro, COSTA RICA; Telephia, San Francisco, CA; Telespree Communications, San Francisco, CA; Teltier Technologies, Clark, NJ; The Open Group, Reading, UNITED KINGDOM; The Walt Disney Company Limited, London, UNITED KINGDOM; Togabi, San Diego, CA; Trigenix, Cambridge, UNITED KINGDOM; Ulead Systems, Inc., Taipei 114, TAIWAN; Utilicom Inc., Mt. Laurel, NJ; UP Techology, Beijing, PEOPLE'S REPUBLIC OF CHINA; VerdiSoft Corporation, Chicago, IL; Viderent, Inc., Lugano, SWITZERLAND; Vilkas Ltd., Seattle, WA; Vimatix Ltd., Westminister, CO; Virgin Mobile, Berlin, GERMANY; Visa International, Tuunga, CA; Voyant Technologies, Inc., Redwood City, CA; WaterCove Networks, Galway, IRELAND; Weblicon Technologies AG, Redwood City, CA; Webmessenger, Inc., Tuunga, CA; Webraska Mobile Technologies, Maisons-Laffitte Cedex, FRANCE; Websoft International Inc., Tokyo, JAPAN; Wirlex Soft, Toronto, Ontario, CANADA; Wysdom Inc., Toronto, Ontario, CANADA; Yamaha Corporation, Hamamatsu, JAPAN; YellowPepper Wireless LLC, Redwood City, CA; YQA Now Ltd., Galway, IRELAND; and Zentek Techology, Inc., Redwood City, CA have withdrawn as parties to this venture.

Also, Tomorrow Focus AG has changed its name to Cellular GmbH, Hamburg, GERMANY; Cognizant Techology Solutions UK Ltd. has changed its name to Cognizant Techology Solutions Ltd., London, UNITED KINGDOM; Chaoticom, Inc., has changed its name to Groove Mobile, Inc., Andover, MA; 3 has changed its name to Hutchinson 3G UK Ltd., Hong Kong, HONG KONG–CHINA; ZoomOn has changed its name to Ikivo AB, Stockholm, SWEDEN; Pumatech has changed its name to Intellisync, San Jose, CA; Acotel has changed its name to Jinny Software Ltd., Dublin, IRELAND; KT Icom has changed its name to KTF, Seoul, REPUBLIC OF KOREA; Network Associates, Inc., has changed its name to McAfee, Inc., Santa Clara, CA; InphoMatch, Inc., has changed its name to Mobile 365, Chantilly, VA; BSI Co., Ltd., has changed its name to Next Com KK, Tokyo, JAPAN; mm02 has changed its name to 02, Slough, UNITED KINGDOM; Teleca Mobile Technologies has changed its name to Obigo AB, Lund, SWEDEN; Oracle Corporation has changed its name to Oracle USA, Inc., Redwood Shores, CA; Hopen Software Engineering Co., Ltd., has changed its name to Pollex Mobile Software Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA; Smartner Information Sytems, Ltd., has changed its name to SEVEN, Helsinki, FINLAND; Cegetel/SFR ''Societe Francaise du Radiotelephone'' has changed its name to SFR, Paris, FRANCE; Telcordia Technologies, Inc., has changed its name to Telcordia, Piscataway, NJ; and Cash-U Mobile Technologies Ltd. has changed its name to Uniper, Netanya, ISRAEL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OMA intends to file additional written notification disclosing all changes in membership.

On March 18, 1998, OMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on July 7, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 26, 2003 (68 FR 55657).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–17161 Filed 8–29–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0230(2005)]

Vehicle-Mounted Elevating and Rotating Work Platforms Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its request for an extension of the information collection requirements specified for aerial lifts by its Vehicle-Mounted Elevating and Rotating Work Platforms Standard (29 CFR 1910.67). The paperwork provision of the Vehicle-Mounted Elevating and Rotating Work Platforms Standard specifies a requirement for maintaining and disclosing the manufacturers'

certification records for modified aerial lifts. The purpose of the requirement is to reduce employees' risk of death or serious injury by ensuring that aerial lifts are inspected and/or tested after modification to ensure they are in safe operating condition.

DATES: Comments must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or received) by October 31, 2005.

Facsimile and electronic transmission: Your comments must be received by October 31, 2005.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0230(2005), by any of the following methods:

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov*. Follow instructions on the OSHA Webpage for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Webpage at *http://www.OSHA.gov*. In addition, the ICR, comments, and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Theda Kenney at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

OSHA's Vehicle-Mounted Elevating and Rotating Work Platforms Standard (29 CFR 1910.67) (the ''Standard'') specifies one paperwork requirement.

Manufacturer's Certification of Modification (paragraph (b)(2)). The Standard requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA Standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers. This record provides assurance to employers, employees, and compliance officers that the aerial lift is safe for use, thereby preventing failure while employees are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection-of-information (paperwork) requirements necessitated by the Standard on Vehicle-Mounted Elevating and Rotating Work Platforms (29 CFR 1910.67(b)(2)). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information collection requirement.

Type of Review: Extension of currently approved information collection requirement.

Title: Vehicle-Mounted Elevating and Rotating Work Platforms (29 CFR 1910.67(b)(2)).

OMB Number: 1218–0230.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,000.

Frequency: On occasion.

Average Time Per Response: 1 minute (.02) to maintain the manufacturer's certification record to 2 minutes (.03 hour) to disclose it to an OSHA Compliance Officer.

Estimated Total Burden Hours: 21.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contract the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Webpage are available at *http://www.OSHA.gov*. Contact the

OSHA Docket Office for information about materials not available through the OSHA Webpage and for assistance using the Webpage to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Webpage. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Jonathan L. Snare, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on August 24, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary of Labor.

[FR Doc. 05–17231 Filed 8–29–05; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88]

MET Laboratories, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of MET Laboratories, Inc., (MET) for expansion of its recognition to use additional test standards, and presents the Agency's preliminary finding to grant MET's requested expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: You must submit information or comments, or any request for extension of the time to comment, by the following dates:

- *Hard copy:* Your information or comments must be submitted (postmarked or sent) by September 14, 2005.
- *Electronic transmission or facsimile:* Your comments must be sent by September 14, 2005.

ADDRESSES: You may submit information or comments to this notice—identified by docket number NRTL1–88—by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OSHA Web site: *http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's Web page.
- Fax: If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- Regular mail, express delivery, hand delivery and courier service: Submit three copies to the OSHA Docket Office, Docket No. NRTL1–88, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Instructions: All comments received will be posted without change to *http://dockets.osha.gov*, including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that MET Laboratories, Inc., (MET) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion request covers the use of additional test standards. OSHA's current scope of recognition for MET may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/met.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

The most recent notice published by OSHA for MET's recognition covered an expansion of recognition, which became effective on August 26, 2003 (68 FR 51304).

The current address of the MET facility already recognized by OSHA is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

General Background on the Application

MET has submitted an application, dated November 1, 2004 (see Exhibit 35–1) to expand its recognition to include 12 additional test standards. The NRTL Program staff has determined that each of these standards is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). However, one standard was already included in MET's scope. Therefore, OSHA would approve eleven test standards for the expansion.

MET seeks recognition for testing and certification of products for demonstration of conformance to the following eleven test standards:

UL 5A Nonmetallic Surface Raceways and Fittings

UL 291 Automated Teller Systems
UL 294 Access Control System Units
UL 508A Industrial Control Panels
UL 963 Sealing, Wrapping, and Marking Equipment
UL 1727 Commercial Electric Personal Grooming Appliances
UL 1863 Communication Circuit Accessories
UL 60065 Audio, Video and Similar Electronic Apparatus**
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor Compressors
UL 61010C–1 Process Control Equipment

**Note: This standard is comparable to UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use. Since no NRTL is currently recognized for UL 60065, we plan to modify the scope of any NRTL currently recognized for UL 6500 to add UL 60065.

OSHA's recognition of MET, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, any NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

A few of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Preliminary Finding on the Application

MET has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of MET's NRTL testing facilities. However, NRTL Program assessment staff reviewed information pertinent to the request and recommended that MET's recognition be expanded to include the eleven additional test standards listed above (see Exhibit 35–2). Our review of the application file, the assessor's recommendation, and other pertinent documents indicate that MET can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion for the eleven additional test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether MET has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is not adequately justified. You may obtain or review copies of MET's requests, the on-site review report, other pertinent documents, and all submitted comments, as received, by contacting the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL1–88 contains all materials in the record concerning MET's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant MET's expansion request. The Agency will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 15th day of August, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary.

[FR Doc. 05–17184 Filed 8–29–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–98]

NSF International, Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision granting the renewal of recognition of NSF International (NSF) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The renewal of recognition becomes effective on August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal of recognition of NSF International (NSF) as a Nationally Recognized Testing Laboratory (NRTL). This renewal covers NSF's existing scope of recognition, which may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/nsf.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' [1] by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A

[1] Properly certified means, in part, that the product is labeled or marked with the NRTL's registered certification mark (*i.e.*, the registered mark the NRTL uses for its NRTL work) and that the product certification falls within the scope of recognition of the NRTL.

to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

NSF International (NSF) initially received OSHA recognition as a Nationally Recognized Testing Laboratory on December 10, 1998 (63 FR 68309) for a five-year period ending on December 10, 2003. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. NRTLs submitting requests within this allotted time period retain their recognition during OSHA's renewal process. NSF submitted a request, dated February 21, 2003 (see Exhibit 13–2) [2], to renew its recognition, within the allotted time period, and retained its recognition pending OSHA's final decision in this renewal process. The NRTL Program staff performed an on-site review (assessment) of NSF's NRTL facilities and in the on-site review report, dated November 21, 2003 (see Exhibit 13–4)*, the program staff recommended the renewal of NSF's recognition. The preliminary notice announcing the renewal application was published in the **Federal Register** on February 28, 2005 (70 FR 9678). Comments were requested by March 15, but no comments were received in response to this notice.

You may obtain or review copies of all public documents pertaining to the NSF application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC, 20210. Docket No. NRTL2–98 contains all materials in the record concerning NSF's application.

The current address of the NSF facility (site) already recognized by OSHA and included as part of the renewal is:

NSF International, 789 Dixboro, Ann Arbor, Michigan 48105.

Final Decision and Order

NRTL Program staff has examined the application, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that NSF International has met the requirements of 29 CFR 1910.7 for renewal of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews the recognition of NSF, subject to this limitation and these conditions.

Limitation

OSHA limits the renewal of NSF's recognition to testing and certification of products for demonstration of conformance to the test standards listed below. OSHA has determined that each of these standards meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 73 Motor-Operated Appliances
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
UL 197 Commercial Electric Cooking Appliances
UL 399 Drinking-Water Coolers
UL 466 Electric Scales
UL 471 Commercial Refrigerators and Freezers
UL 514B Fittings for Cable and Conduit
UL 514C Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
UL 514D Cover Plates for Flush-Mounted Wiring Devices
UL 541 Refrigerated Vending Machines
UL 563 Ice Makers
UL 621 Ice Cream Makers
UL 651 Schedule 40 and 80 PVC Conduit
UL 651A Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 651B Continuous Length HDPE Conduit
UL 749 Household Dishwashers
UL 751 Vending Machines
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 921 Commercial Electric Dishwashers
UL 982 Motor-Operated Household Food Preparing Machines
UL 1081 Swimming Pool Pumps, Filters, and Chlorinators
UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
UL 1563 Electric Spas, Equipment Assemblies, and Associated Equipment
UL 1795 Hydromassage Bathtubs
UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection
UL 61010A–1 Electrical Equipment For Laboratory Use; Part 1: General Requirements

OSHA's recognition of NSF, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many UL test standards also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Supplemental Programs

The renewal includes NSF's continued use of the supplemental programs for which it is approved. Use of these programs is based upon the criteria detailed in OSHA's March 9, 1995, **Federal Register** notice (60 FR 12980). This notice lists nine (9) programs, eight of which (called the supplemental programs) an NRTL may use to control and audit, but not to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA has already recognized NSF for the programs listed below. See *http://www.osha.gov/dts/otpca/nrtl/nsf.html.*

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrical Commission Certification Body (IEC–CB) Scheme.

[2] Exhibits 13–2 and 13–4 were referred to as Exhibits 14–1 and 16, respectively, in the February 28, 2005 notice.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these supplemental programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Conditions

NSF must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to NSF's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If NSF has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

NSF must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, NSF agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

NSF must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

NSF will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

NSF will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 15th day of August, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary.

[FR Doc. 05–17182 Filed 8–29–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–2001]

TUV America, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's final decision expanding the recognition of TUV America, Inc., as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The expansion of recognition becomes effective on August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of TUV America, Inc., (TUVAM) as a Nationally Recognized Testing Laboratory (NRTL). This expansion covers the use of additional test standards. OSHA's current scope of recognition for TUVAM may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/tuvam.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' [1] by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html.*

TUVAM submitted an application, dated August 1, 2003 (see Exhibits 7 and 7–1), to expand its recognition to include 45 additional test standards. The NRTL Program staff determined that one of these standards is not an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). The staff makes this determination in processing the expansion request of any NRTL. Therefore, OSHA is approving 44 test standards for the expansion. Following review of the application, OSHA requested certain additional information from TUVAM and deferred action on the application pending receipt of this information. The NRTL adequately responded to that request prior to publication of the preliminary notice, permitting OSHA to resume processing of the application. The preliminary notice announcing the expansion application was published in the **Federal Register** on May 18, 2005 (70 FR 28581). Comments were requested by June 2, but no comments were received in response to this notice.

You may obtain or review copies of all public documents pertaining to the TUVAM application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC, 20210. Docket No. NRTL2–2001 contains all materials in the record concerning TUVAM's application.

The current addresses of the TUVAM facilities already recognized by OSHA are: TUV Product Services (TUVAM), 5 Cherry Hill Drive, Danvers, Massachusetts 01923; TUV Product Services (TUVAM), 10040 Mesa Rim Road, San Diego, California 92121; and TUV Product Services (TUVAM), 1775 Old Highway 8 NW., Suite 104, New Brighton (Minneapolis), Minnesota 55112.

[1] Properly certified means, in part, that the product is labeled or marked with the NRTL's ''registered'' certification mark (*i.e.*, the mark the NRTL uses for its NRTL work) and that the product certification falls within the scope of recognition of the NRTL.

Final Decision and Order

NRTL Program staff has examined the application, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that TUVAM has met the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of TUVAM, subject to the following limitation and conditions.

Limitation

OSHA limits the expansion of TUVAM's recognition to testing and certification of products for demonstration of conformance to the test standards listed below. OSHA has determined that each of these standards meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

UL 22 Amusement and Gaming Machines
UL 197 Commercial Electric Cooking Appliances
UL 250 Household Refrigerators and Freezers
UL 291 Automated Teller Systems
UL 427 Refrigerating Units
UL 467 Electrical Grounding and Bonding Equipment
UL 471 Commercial Refrigerators and Freezers
UL 499 Electric Heating Appliances
UL 507 Electric Fans
UL 508a Industrial Control Panels
UL 508c Power Conversion Equipment
UL 541 Refrigerated Vending Machines
UL 551 Transformer-type Arc-welding Machines
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 873 Temperature-Indicating and -Regulating Equipment
UL 923 Microwave Cooking Appliances
UL 963 Sealing, Wrapping, and Marking Machines
UL 982 Motor-operated Household Food Preparing Machines
UL 998 Humidifiers
UL 1004 Electric Motors
UL 1005 Electric Flatirons
UL 1017 Vacuum Cleaners, Blower Cleaners, and Household Floor Finishing Machines
UL 1026 Electric Household Cooking and Food Serving Appliances
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1083 Household Electric Skillets and Frying-Type Appliances
UL 1090 Electric Snow Movers
UL 1236 Battery Chargers for Charging Engine-Starter Batteries
UL 1278 Movable and Wall-or Ceiling-Hung Electric Room Heaters
UL 1310 Class 2 Power Units
UL 1448 Electric Hedge Trimmers
UL 1450 Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
UL 1492 Audio-Video Products and Accessories
UL 1585 Class 2 and Class 3 Transformers
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1662 Electric Chain Saws
UL 1740 Industrial Robots and Robotic Equipment
UL 1995 Heating and Cooling Equipment
UL 2200 Stationary Engine Generator Assemblies
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1: General Requirements
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Shavers, Hair Clippers, and Similar Appliances
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Motor-Compressors
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Processes
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Mixing and Stirring

OSHA's recognition of TUVAM, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many UL test standards also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUVAM must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to TUVAM's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVAM has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVAM must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVAM agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

TUVAM will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVAM will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 15th day of August, 2005.

Jonathan L. Snare,

Deputy Assistant Secretary.

[FR Doc. 05–17183 Filed 8–29–05; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 14, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *records.mgt@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of Defense, National Geospatial Intelligence Agency (N1–537–05–4, 15 items, 10 temporary items). Imagery policy files. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of satellite and airborne imagery policy decisions, foreign arrangements, and other applications of imagery records maintained by the office of primary responsibility. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Defense, National Security Agency-Central Security Service (N1–457–05–1, 3 items, 3 temporary items). Case files and other records relating to employee counseling and consultation services.

3. Department of Energy, Bonneville Power Administration (N1–305–05–1, 4 items, 4 temporary items). Records relating to agency transmission policies, guidelines, and instructions. Included are such records as memoranda, manuals, rate schedules, and correspondence. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Homeland Security, U.S. Coast Guard (N1–26–05–8, 6 items, 6 temporary items). Case files and other records relating to claims of child and spouse abuse. Also included are electronic copies of records created using electronic mail and word processing.

5. Department of Homeland Security, U.S. Customs and Border Protection (N1–568–05–1, 8 items, 6 temporary items). Inputs, outputs, backups, and electronic mail and word processing copies associated with an electronic system that contains harmonized tariff numbers used by customs to calculate duties for imported and exported commodities. Proposed for permanent retention are recordkeeping copies of master files and system documentation. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Homeland Security, U.S. Customs and Border Protection (N1–568–05–2, 14 items, 10 temporary items). Inputs, outputs, backups, and electronic mail and word processing copies associated with an electronic information system that tracks the importation of goods into the U.S. by sea, air, and rail. Proposed for permanent retention are recordkeeping copies of master files and system

documentation. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of the Interior, Office of the Secretary (N1–48–05–9, 16 items, 8 temporary items). Files of the Illinois and Michigan Canal National Heritage Corridor Commission. Records include commission member appointment documents, grant administrative records, audits and closed loan files, electronic copies of photographs, web content records, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of commission minutes, commission meeting correspondence and committee records, policy and bylaws, reports, photographic prints, executive director subject files, and publications. Notice concerning this schedule was previously published in the May 23, 2005 issue of the **Federal Register**. It is being republished because additional items are now proposed as temporary.

8. Department of the Interior, Minerals Management Service (N1–473–05–1, 9 items, 9 temporary items). Records of the Minerals Revenue Management division involving royalty-in-kind sales or exchanges of oil or gas, as well as related financial matters. Included are letters to industry personnel, sales or exchange files, company credit evaluations and exposure determinations, and contracts. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of the Interior, Minerals Management Service (N1–473–05–2, 3 items, 2 temporary items). Records of the Minerals Revenue Management division relating to mineral leasing claims and legal proceedings, including electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of claims and litigation files involving Indian lands.

10. Department of Justice, Environment and Natural Resources Division (N1–60–05–6, 7 items, 4 temporary items). Inputs, outputs, and electronic mail and word processing copies associated with an electronic system used to track litigation cases undertaken by the Division. Proposed for permanent retention are master files, including a public-use version, and the system documentation.

11. Department of Justice, Office of the Solicitor General (N1–60–05–7, 5 items, 3 temporary items). Outputs and electronic mail and word processing copies associated with an electronic system used to track case work of the Office. Proposed for permanent retention are master files and the system documentation.

12. Department of Justice, Bureau of Prisons (N1–129–05–16, 9 items, 9 temporary items). Inputs, outputs, master files, documentation, and electronic mail and word processing copies associated with two electronic systems used to manage, track, and record inmate telephone calls.

13. Department of the Transportation, Federal Motor Carrier Safety Administration (N1–557–05–3, 41 items, 41 temporary items). Administrative records relating to financial processing and operations, budget, and disbursement. Included are accounts receivable files, financial management files, and reimbursable agreement files. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

14. Department of Transportation, Federal Motor Carrier Safety Administration (N1–557–05–10, 23 items, 23 temporary items). Records accumulated by the Office of Civil Rights, including such files as affirmative action plans, program subject files, reference materials, and files associated with Title VI non-discrimination monitoring and enforcement. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

15. Department of the Treasury, U.S. Mint (N1–104–05–3, 9 items, 9 temporary items). Records accumulated in the Chief Information Office relating to Year 2000 Compliance. Included are policy and planning records, forms and reports used to verify system compliance, meeting minutes, and agency web site pages that contain copies of progress reports and related materials. Also included are electronic copies of records created using electronic mail and word processing.

16. Consumer Product Safety Commission, (N1–424–05–1, 5 items, 4 temporary items). Reports, correspondence, notes, recommendations, and related documents that pertain to citations, seizures, and other legal actions. Also included are electronic copies of records created using electronic mail and word processing. Recordkeeping copies of these files are proposed for permanent retention.

17. National Archives and Records Administration, Government-wide (N1-GRS–05–2, 2 items, 2 temporary items). Addition to General Records Schedule 3, Procurement, Supply, and Grant Records (including email and word processing copies), for records documenting the implementation of the Federal Activities Inventory Reform Act of 1998, Public Law 105–270, formerly known as the Office of Management and Budget Circular No. A–76, Performance of Commercial Activities (revised). Included are recordkeeping copies of case files and studies, and information copies and background materials maintained by other offices.

18. Small Business Administration, Office of Surety Guarantees (N1–309–04–07, 6 items, 4 temporary items). Outputs, backups, and electronic mail and word processing copies associated with the Surety Bond Guarantee/Preferred Surety Bond Guarantee System, which maintains an accounting of contingent liabilities, fee receivables, claim payables, and other related income and expense information. Proposed for permanent retention are master files and the system documentation.

19. Tennessee Valley Authority, Agency-wide (N1–142–05–2, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with agency employee and contractor training. This schedule also extends the retention periods for recordkeeping copies of these files, which were previously approved for disposal.

Dated: August 23, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–17157 Filed 8–29–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

NAME: Proposal Review Panel for Materials Research (DMR) #1203.

DATES & TIMES:

September 27, 2005; 7 p.m.–8:30 p.m. (closed)

September 28, 2005; 7:45 a.m.–9 p.m. (open 7:45 a.m.–11:45 a.m., 12:45 p.m.–4:45 p.m., 6:15 p.m.–7 p.m.

September 29, 2005; 8 a.m.–4 p.m. (open 9 a.m.–10:45 a.m.)

PLACE: Massachusetts Institute of Technology, Cambridge, MA.

TYPE OF MEETING: Part Open.

CONTACT PERSON: Dr. Ulrich Strom, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4938.

PURPOSE OF MEETING: To provide advice and recommendations concerning progress of Materials Research Science and Engineering Center.

AGENDA:

September 27, 2005—Closed to brief site visit panel

September 28–29, 2005—Open for Directors overview of Materials Research Science and Engineering Center and presentations. Closed to review and evaluate progress of Materials Research Science and Engineering Center.

REASON FOR CLOSING: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 25, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–17219 Filed 8–29–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposed Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announced its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance with the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposed review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *http://www.nsf.gov/events/advisory.jsp.* This information may also be requested by telephoning 703/292–8182.

Dated: August 25, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–17220 Filed 8–29–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Agenda

TIME AND DATE: 9:30 a.m., Wednesday, September 7, 2005.

PLACE: NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are Open to the Public.

7565A Safety Study: Risk Factors Associated With Weather-Related General Aviation Accidents.

7650A Aviation Accident Report—Crash During Landing, Executive Airlines Flight 5401, Avions de Transport Regional 72–212, N438AT, San Juan, Puerto Rico, May 9, 2004.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, September 2, 2005.

The public may view the meeting via a live or archived Web cast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: August 26, 2005.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 05–17340 Filed 8–26–05; 1:28 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of August 29, September 5, 12, 19, 26, October 3, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 29, 2005

There are no meetings scheduled for the week of August 29, 2005.

Week of September 5, 2005—Tentative

Wednesday, September 7, 2005

9:00 a.m. Discussion of Security Issues (Closed—Ex. 1)

1:30 p.m. Discussion of Security Issues (Closed—Ex. 3 & 9)

Thursday, September 8, 2005

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Week of September 12, 2005—Tentative

There are no meetings scheduled for the week of September 12, 2005.

Week of September 19, 2005—Tentative

There are no meetings scheduled for the week of September 19, 2005.

Week of September 26, 2005—Tentative

There are no meetings scheduled for the week of September 26, 2005.

Week of October 3, 2005—Tentative

There are no meetings scheduled for the week of October 3, 2005.

*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, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodations 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 25, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–17292 Filed 8–26–05; 10:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 5, 2005, to August 18, 2005. The last biweekly notice was published on August 16, 2005 (70 FR 48201).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in

the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the basis for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) 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, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: July 14, 2005.

Description of amendment request: The proposed change would modify the Millstone Power Station, Unit No. 2 reactor coolant system (RCS) heatup and cooldown limits Technical Specification (TS) 3.4.9.1, ''Reactor Coolant System''. The associated TS bases will be updated to address the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes are a result of the new analysis of the RCS P–T [pressure-temperature] limits and associated heatup/cooldown rates. These changes will support plant operation to 54 EFPY [effective full-power years] and provide flexibility during plant heatup and cooldown, especially during equipment manipulations such as securing RCPs [reactor coolant pumps], swapping SDC [shutdown cooling] heat exchangers, and initiating SDC.

The hydrostatic and leak test limit will now be administratively controlled by the heatup limit. Administratively limiting hydrostatic and leak tests to the heatup limit provides additional margin to the Appendix G requirements. Table 3.4–2 has been modified to remove the Inservice Hydrostatic and Leak Testing item and to add a note indicating heatup limitations also apply to hydrostatic and leak test conditions. The requirement to remain isothermal (rate '' 5 °F/hour) for 1 hour prior [to] and during hydrostatic and leak test [s] above the heatup curve is no longer needed as operation above the heatup curve is no longer allowed.

The proposed changes to the RCS P–T limits and rates of temperature change are based on the new analysis. This analysis uses standard approved methods that ensure the margins of safety required by 10 CFR 50, Appendix G are maintained. The other changes discussed are more restrictive enhancements to technical specification requirements. Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions. The increased heatup and cooldown rates are bounded by the existing accident analysis. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes will modify the RCS P–T limits, and the RCS heatup and cooldown rate limits. The proposed changes are being made as a result of the new P–T and LTOP [low-temperature overpressure protection] analyses performed. The new P–T curves and heatup and cooldown rates are developed in accordance with the requirements and methods described in 10 CFR 50 Appendix G and are consistent with the criteria contained in the Standard Review Plan Section 5.3.2. This will ensure the integrity of the reactor vessel is maintained during all aspects of plant operation. Therefore, there is no significant effect on the probability or consequences of any accident previously evaluated and no significant impact on offsite doses associated with previously evaluated accidents. This license amendment request does not result in a reduction of the margin of safety as defined in the bases for the technical specifications addressed by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.

NRC Section Chief: Darrell J. Roberts.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 24, 2005.

Description of amendment request: The proposed amendment would revise the Technical Specification allowances to bypass the rod worth minimizer consistent with previously-approved standards.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed special operation allowances do not involve the modification of any plant equipment or affect basic plant operation. The relevant design basis accident is the control rod drop accident (CRDA), which involves multiple failures to initiate the event. Control rod decoupling and remaining stuck full-in while its drive mechanism is withdrawn are required initiators. The proposed special operations have no adverse impact on control rod coupling or control rod performance. As such, there is no significant increase in the probability of an accident previously evaluated.

The CRDA analysis consequences and related initial conditions remain unchanged when invoking the proposed special operation allowance. The control rod withdrawal sequence is assumed to limit individual control rod worths as another initial condition for the CRDA. However, consistent with existing requirements for control rod withdrawal operations, all control rod withdrawal sequences are analyzed to meet this criterion and are implemented under the control of the rod worth minimizer or by independent verification by a second licensed operator or other qualified member of the technical staff. The consequences of analyzed events are therefore not affected. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed special operation allowances do not involve the modification of any plant equipment or affect basic plant operation. The relevant design basis accident is the control rod drop accident (CRDA), which involves multiple failures to initiate the event. Additionally, CRDA analysis consequences and related initial conditions remain unchanged when invoking the proposed special operation allowance. These changes do not negate any existing requirement, and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J.M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: Darrell Roberts.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: May 24, 2005.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) applicability requirements related to primary containment oxygen concentration and drywell-to-suppression chamber differential pressure limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The proposed applicability and associated default actions being revised do not involve the modification of any plant equipment or affect basic plant operation. Additionally, the associated limitations are not assumed to be an initiator of any analyzed event. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The limits imposed by the associated specifications remain unchanged. The consequences of analyzed events are therefore not affected. Brief periods where the requirements for maintaining these limits are relaxed are currently considered in the TS and associated licensing basis. The proposed change clarifies and modifies the definition of these periods, however, any changes are not considered significant and are supported by remaining [definitions] consistent with the recommended allowances of NUREG–1433, Rev. 3, ''Standard Technical Specifications, General Electric Plants, BWR [boiling-water reactor]/4.'' Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with

current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The proposed applicability and associated default actions being revised do not involve the modification of any plant equipment or affect basic plant operation. Additionally, the associated limitations remain unchanged. These changes do not negate any existing requirement, and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. The revised plant conditions reflecting the applicability and the duration allowed to restore limits are not credited in any design basis event. These changes do not reflect any significant adverse impact to the overall risk of operating during brief periods without the required primary containment oxygen concentration since the total time for any occurrence is only marginally extended and reflects times recommended by NUREG–1433. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J.M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: Darrell Roberts.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 27, 2005.

Description of amendment request: The proposed amendment revises the Facilities Operating License to change technical specification (TS) 3.6.1.3, Required Actions A.1 and B.1, to add closed relief valves as acceptable isolation devices provided that the relief setpoint is greater than 1.5 times containment design pressure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Primary Containment Isolation Valves (PCIVs) are accident mitigating features designed to limit releases from the containment following an accident. The Technical Specifications (TS) specify actions to be taken to preserve the containment isolation function if a PCIV is inoperable. These actions include isolating the penetration flow path by specific methods. The proposed TS change adds closed relief valves with acceptable relief setpoints as another method to isolate the penetration flowpath. The use of relief valves with relief setpoints greater than 1.5 times the containment design pressure meets the Standard Review Plan options for acceptable isolation devices. This relief setpoint provides [a] sufficient margin to minimize the potential for premature opening due to containment post-accident pressures. The proposed change does not affect any initiators to accidents previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any new modes of plant operation or adversely affect the design function or operation of safety features. The proposed TS change allows use of existing plant equipment as compensatory measures to maintain the containment isolation design intent when the normal isolation features are inoperable. Since relief valves used for this purpose will not be disabled by blind flanges, the system piping overpressure protection design feature will also be preserved.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The safety margin associated with this change is that associated with preserving the containment integrity. NUREG–0800, the Standard Review Plan, recognizes that relief valves with relief setpoints greater than 1.5 times containment design pressure are acceptable as containment isolation devices. Closed relief valves with relief setpoints of this margin provide an isolation alternative that is less susceptible to a single failure (*i.e.*, inadvertent opening) yet still preserves the overpressure protection that the component was intended to provide.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Section Chief: David Terao.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: June 15, 2005.

Description of amendment request: The proposed change revises Technical Specification (TS) 3.3.2.2 ''Feedwater System and Main Turbine High Water Level Trip Instrumentation,'' to reflect a design change to the instrumentation logic.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises TS 3.3.2.2 to reflect a design change to the instrumentation logic that trips the three feedwater pumps and main turbine. The design change will add a redundant high reactor water level trip channel to both trip systems. The Feedwater System and main turbine high water level trip is credited in the QCNPS [Quad Cities Nuclear Power Station] accident analysis to function during an increase in feedwater flow transient. Specifically, the instrumentation and associated trip limits the reactor water level increase resulting from a feedwater controller failure during maximum flow demand, thus preventing a nuclear fuel minimum critical power ratio violation associated with increased subcooling and resultant pressure transient. Additionally, this trip function prevents excessive water inventory from entering the main steam system and damaging steam-handling equipment.

TS requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to detect, prevent, or mitigate accidents. The Feedwater System and main turbine trip instrumentation serves to mitigate transients that result in increased reactor water level. The trip instrumentation associated with the proposed changes and design change are independent from the instrumentation and logic used in the Feedwater Control System and Turbine Control System. Therefore, the proposed change does not involve a

significant increase in the probability of an accident previously evaluated.

The proposed design change to add a redundant high reactor water level trip channel to both trip systems, and the associated TS changes, do not adversely impact the instrumentation's ability to perform the functions described above. The design change will utilize installed spare trip units and relay contacts of the same design as those presently credited to meet TS 3.3.2.2 requirements. The method in which the reactor water level is sensed and the reactor water level setpoints at which a trip is initiated are not impacted. The instrumentation response times and the instrumentation output to the equipment being tripped remains the same. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not alter the parameters within which the plant is operated. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed change. This proposed change will not alter the manner in which equipment operation is initiated nor will the demands on mitigating equipment be changed. The proposed change to TS 3.3.2.2 adds redundant instrumentation to improve system reliability, and increase maintenance and testing flexibility. The instrumentation being added to the trip logic utilizes the same transmitters, and the same type of trip units and trip relays, as presently used to monitor reactor water level and initiate Emergency Core Cooling System operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. The proposed amendment supports a change to the logic that trips the three feedwater pumps and the main turbine from a two-out-of-two initiation logic to a one-out-of-two twice initiation logic. The proposed amendment does not alter the setpoints at which the trip function occurs, the response time of the trip initiation logic, or the plant response following a valid trip signal. The proposed changes to the TS 3.3.2.2 Required Actions and Completion Times are consistent with other instrumentation TS that incorporate a one-out-of-two twice initiation logic.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Y. Suh.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: August 4, 2005.

Description of amendment request: The proposed amendment would revise Hope Creek Generating Station Technical Specification 3.7.1.3, ''Ultimate Heat Sink,'' to allow a 24-hour average temperature to be used if ultimate heat sink temperature exceeds 89.5 °F provided the ultimate heat sink temperature or safety auxiliary cooling system temperature does not exceed 95 °F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The ultimate heat sink (UHS) is not an accident indicator. An increase in UHS temperature will not increase the probability of occurrence of an accident. The proposed change will allow plant operation to continue if temperature of the UHS exceeds 89.5 °F provided that UHS temperature averaged over the previous 24-hour period is less than 89.5 °F and the UHS temperature and safety auxiliary cooling system (SACS) temperatures do not exceed 95 °F. Maintaining these temperatures less than or equal to 95 °F ensures that accident mitigation equipment will continue to perform its required function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new of different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not install any new or different equipment or modify equipment in the plant. The proposed change will not alter the operation or function of structures, systems or components. The response of the plant and the operators following a design basis accident is unaffected by this change. The proposed change does not introduce any new failure modes and the design basis heat removal capability of the safety related components is maintained at the increased UHS temperature limit.

Therefore, the proposed chage will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The increase to the UHS temperature will not adversely affect design basis accident mitigation equipment. Ensuring that SACS temperature remains below 95 °F when UHS is above 89.5 °F ensures that heat removal capability is within the current analyzed limits. Accident mitigation equipment will continue to function as assumed in the accident analysis. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: Darrell J. Roberts.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental

assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 17, 2004.

Brief description of amendment: The amendment revised Appendix B, Environmental Protection Plan (non-radiological) of the Clinton Facility Operating License.

Date of issuance: August 9, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 166.

Facility Operating License No. NPF–62: The amendment revised the Environmental Protection Plan.

Date of initial notice in ***Federal Register:*** April 12, 2005 (70 FR 19112).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 2005.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: October 20, 2004.

Brief description of amendment: The amendment revised Table 4.1–1, ''Instrument Surveillance Requirements,'' of the Technical Specifications and associated Bases to extend the functional testing surveillance interval from monthly to a semi-annual interval for reactor trip system instrumentation channels, and from the current monthly to quarterly for the reactor trip devices.

Date of issuance: August 11, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 255.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 23, 2004 (69 FR 68181)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 2005.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: June 24, 2004, as supplemented February 24, 2005.

Brief description of amendment: The amendment revised TMI–1 Technical Specification (TS) 4.0.2 to adopt the provisions of Technical Specification Task Force (TSTF) Traveller TSTF–358, Revision 6, revising the required actions and time constraints regarding missed surveillances. The amendment also added a new Section 6.18 to the TSs incorporating a Technical Specifications Bases Control Program.

Date of issuance: August 12, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 256.

Facility Operating License No. DPR–50. Amendment revised the TSs.

Date of initial notice in ***Federal Register:*** March 1, 2005 (70 FR 9987).

The supplement dated February 24, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination . The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2005.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 21, 2004.

Brief description of amendment: The amendment changes Technical Specification Section 5.5.14, ''Technical Specifications (TS) Bases Control Program,'' to incorporate changes in Section 50.59 of Title 10 of the Code of Federal Regulations terminology. The amendment also revises Section 5.7.1, ''High Radiation Area,'' by adding wording that was inadvertently deleted with the issuance of the Improved Standard Technical Specifications in Amendment No. 176.

Date of issuance: August 2, 2005.

Effective date: August 2, 2005.

Amendment No.: 205.

Renewed Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 31, 2004 (69 FR 53101).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 2, 2005.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: December 23, 2004.

Brief description of amendment: The amendment relocated certain Technical Specifications (TSs) to the Millstone Power Station, Unit No. 3 Technical Requirements Manual.

Date of issuance: August 11, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 225.

Facility Operating License No. NPF–49: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** May 24, 2005 (70 FR 29788).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 2005.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 30, 2004, as supplemented by letters dated April 26 and June 8, 2005.

Brief description of amendment: The amendment changes the existing steam generator (SG) tube surveillance program to be consistent with that being proposed by the Technical Specification (TS) Task Force (TSTF) in TSTF–449. These changes revise definitions in TS 1.1, reactor coolant system operational leakage in TS 3.4.13, SG program in TS 5.5.9, and SG tube inspection reports in TS 5.6.7, and add a new TS 3.4.16 on SG tube integrity. Also, as a result of the licensee replacing the SGs with SGs having a new Alloy 690 thermally treated tubing design, the TSs are revised to reflect this replacement.

Date of issuance: August 10, 2005.

Effective date: As of the date of issuance and shall be implemented prior to resumption of operation from the 1R19 refueling outage scheduled for the fall of 2005.

Amendment No.: 224.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of notices in ***Federal Register:*** November 9, 2004 (69 FR 64987) and May 24, 2005 (70 FR 29790). The supplement dated June 8, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 10, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of application for amendment: December 6, 2004, as supplemented on June 14, 2005.

Brief description of amendment: The amendment makes administrative and other miscellaneous changes to the Facility Operating License (FOL) and Technical Specifications (TSs) including correction of references and deleting obsolete or redundant TS requirements and surveillances.

Date of Issuance: August 15, 2005.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 226.

Facility Operating License No. DPR–28: The amendment revised the FOL and TSs.

Date of initial notice in ***Federal Register:*** January 18, 2005 (70 FR 2888). The supplement contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial *Federal Register* notice.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 15, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania.

Date of application for amendments: September 15, 2004.

Brief description of amendments: The amendments deleted the Technical Specification requirements to maintain hydrogen recombiners and hydrogen/oxygen monitors and related Surveillance Requirements.

Date of issuance: August 11, 2005.

Effective date: As of the date of issuance, to be implemented within 120 days.

Amendments Nos.: 256 and 259.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 1, 2005, (70 FR 5244). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: April 22, 2005.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) related to fuel handling and storage. Specifically, the changes revised TS 3/4.9.11, ''Storage Pool Water Level,'' TS 3/4.9.12, ''Storage Pool Ventilation,'' TS 3/4.9.13, ''Spent Fuel Assembly Storage,'' and TS 5.6, ''Fuel Storage,'' to reflect that spent fuel storage racks are no longer installed in the cask pit or transfer pit. Fuel storage racks were permitted to be temporarily installed in the cask pit and transfer pit during a project to increase spent fuel pool (SFP) storage capacity. All temporarily installed fuel storage racks have now been moved into the SFP. Additionally, the changes relocated the requirements of TS 3/4.9.7, ''Crane Travel—Fuel Handling Building,'' to the Davis-Besse Nuclear Power Station Technical Requirements Manual. The changes to TS 3/4.9.13 and TS 5.6 also reflected that there are no longer low density fuel storage racks in the SFP. The changes made TS requirements consistent with the current fuel storage design.

Date of issuance: August 16, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 266.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 24, 2005 (70 FR 29795).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: February 22, 2005.

Brief description of amendment: The amendment revised the Technical Specifications by eliminating the requirements to provide the NRC monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: August 16, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 267.

Facility Operating License No. NPF–3: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 10, 2005 (70 FR 24651).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 2005.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: February 22, 2005.

Brief description of amendment: The amendment revised the Technical Specifications by eliminating the requirements to submit the NRC monthly operating reports and annual occupational radiation exposure reports.

Date of issuance: August 16, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 136.

Facility Operating License No. NPF–58: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** May 10, 2005 (70 FR 24651).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 2005.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 14, 2004.

Brief description of amendment: The amendment revises a technical specification surveillance requirement to change the required frequency of the reactor building spray nozzle surveillance from once every 10 years to ''following maintenance that could result in nozzle blockage.''

Date of issuance: August 4, 2005.

Effective date: August 4, 2005.

Amendment No.: 219.

Facility Operating License No. DPR–72: Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register:*** January 18, 2005 (70 FR 2891).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2005.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: February 25, 2005, as supplemented June 2, 2005.

Brief description of amendments: The amendments modify the Technical Specifications by revising the near-end-of-life moderator temperature coefficient (MTC) surveillance requirement by placing a set of conditions on core performance, which, if met, would allow conditional exemption from the required MTC measurement.

Date of issuance: August 8, 2005.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 288, 270.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** March 29, 2005 (70 FR 15943).

The supplement dated June 2, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: September 1, 2004, as supplemented by letter dated May 17, 2005.

Brief description of amendments: The amendments approve the use of Generation of Thermal-Hydraulic Information Containment Version 7.1 patch 1 (GOTHIC), for licensing analyses for the Prairie Island Nuclear Generating Plants to (1) evaluate the short-term peak pressure and temperature response of the containment atmosphere to large pipe breaks in high energy piping systems—the design-basis loss-of-coolant accident (LOCA) and the design-basis main steam line break, and (2) to evaluate the long-term containment response following a design-basis LOCA.

Date of issuance: August 12, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 171,161.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Updated Safety Analysis Report.

*Date of initial notice in **Federal Register:*** September 28, 2004 (69 FR 57990).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 12, 2005.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: March 5, 2004.

Brief description of amendments: The amendments revised Technical Specifications Surveillance Requirement (SR) 3.6.4.1.3 to require that only one secondary containment access door in each access opening be verified closed. In addition, SR 3.6.4.1.3 allows entry and exit access between required secondary containment zones that have a single door.

Date of issuance: August 16, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 224 and 201.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 27, 2004 (69 FR 22882).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 16, 2005.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania

Date of application for amendments: September 8, 2004.

Brief description of amendments: The amendments revised the SSES 1 and 2 Technical Specification 3.8.7, ''Distribution Systems-Operating,'' to add an action note to address the potential for deenergized Class 1E battery chargers, and correct three unrelated editorial changes.

Date of issuance: August 17, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 225 and 202.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** May 24, 2005 (70 FR 29798).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 17, 2005.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 1, 2004.

Brief description of amendment: This amendment deleted the Technical Specifications (TSs) associated with hydrogen recombiners, and hydrogen and oxygen monitors.

Date of issuance: August 9, 2005.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 160.

Facility Operating License No. NPF–57: This amendment revised the TSs.

*Date of initial notice in **Federal Register:*** March 15, 2005 (70 FR 12749).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 9, 2005.

No significant hazards consideration comments received: No.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 15, 2005.

Brief description of amendments: The amendments revise the Technical Specification 3.7.10, ''Control Room Emergency Filtration/Pressurization System (CREFS).'' The revision allows a one-time extension from 24 hours to 14 days of the allowable duration of operation with control room boundary inoperable.

Date of issuance: August 11, 2005.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 120, 120.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** May 24, 2005 (70 FR 29801).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 2005.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document,

contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov;* or (4) 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, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: August 8, 2005, as supplemented August 11, 2005.

Brief description of amendment: The amendment revised Technical Specification 3.3.7, ''Containment Spray System,'' specifically, increasing the maximum lake water temperature limit in specification f. from 81 °F to 83 °F.

Date of issuance: August 12, 2005.

Effective date: As of the date of its issuance and shall be implemented within 5 days.

Amendment No.: 190.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated August 12, 2005.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Dated at Rockville, Maryland, this 22nd day of August 2005.

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–16979 Filed 8–29–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8607; 34–52329, File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it will hold a public meeting on Monday, September 19, and Tuesday, September 20, 2005, at the Hyatt at Fisherman's Wharf Hotel, 555 North Point Street, San Francisco, California 94133. The meeting is scheduled for 8 a.m. to 12:30 p.m. on Monday, September 19, and from 10:15 a.m. to 3:30 p.m., with a one-hour break for lunch from 12:30 to 1:30 p.m., on Tuesday, September 20. The meeting will be audio webcast on the Commission's Web site at *www.sec.gov.*

The agenda for the Monday, September 19, session includes hearing oral testimony by participating in roundtables with participants in the SEC Government-Business Forum on Small Business Capital Formation. The roundtables will focus on the process of capital formation for smaller companies since the enactment of the Sarbanes-Oxley Act of 2002. The agenda for the Tuesday, September 20, session includes considering written statements that have been filed with the Advisory Committee in connection with the meeting and considering reports of subcommittees of the Advisory Committee. The Advisory Committee will also consider on Tuesday any recommendations proposed by Members or Official Observers for adoption by the full Advisory Committee.

DATES: Written statements should be received on or before September 12, 2005.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acspc.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov.* Please include File Number 265–23 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. 265–23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acspc.shtml*).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Persons wishing to provide oral testimony at the Monday, September 19, session should contact one of the SEC staff persons listed below by September 9, 2005 and submit a written statement by the deadline for written statements. Sufficient time may not be available to accommodate all those wishing to provide oral testimony. The Co-Chairs of the Advisory Committee have reserved the right to select and limit the time of witnesses permitted to testify at the Advisory Committee meeting.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551–3260, or William A. Hines, Special Counsel, at (202) 551–3320, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, § 10(a), and the regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Jonathan G. Katz,

Committee Management Officer.

[FR Doc. 05–17166 Filed 8–29–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[[Release No. 35–28019]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 24, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 19, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 19, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CenterPoint Energy, Inc., et al. (70–10329)

CenterPoint Energy, Inc. (''CenterPoint''), a registered public-utility holding company under the Act, located at 1111 Louisiana, Houston, TX 77002, Utility Holding, LLC (''Utility Holding''), CenterPoint's direct, wholly owned subsidiary limited liability company, located at 200 West Ninth Street Plaza, Suite 411,Wilmington, DE 19801, CenterPoint Energy Houston Electric, LLC (''CEHouston Electric''), a wholly owned electric utility subsidiary

limited liability company of Utility Holding, and CenterPoint Energy Transition Bond Company II, LLC (''CE Issuer''), a direct, wholly owned subsidiary limited liability company of CEHouston Electric, both located at 1111 Louisiana, Houston, TX 77002 (together, ''Applicants''), have filed an application-declaration, as amended (''Application''), with the Commission under sections 6(a), 7, 9, 10, 12(b), 12(c) 12(f), 12(g) and 13(b) of the Act and rules 42, 43, 44, 45, 54, 90 and 91.

Applicants are requesting authority to issue certain additional transition bonds (''Additional Transition Bonds'') [1] in an amount projected, at this time, to be approximately $2 billion [2] and to engage in certain transactions related to Applicants' financing and recovery of costs associated with the State of Texas' electric-utility industry restructuring, administered by the Texas Commission.[3] The proposed bonds are in addition to transition bonds issued in 2001, prior to CenterPoint's registration with the Commission.[4]

I. Summary of the Request

Applicants request authority to issue the Additional Transition Bonds and engage in related transactions, as generally described below:

1. CEHouston Electric, to sell, pledge or assign transition property (''Transition Property''), as described below, to CE Issuer in exchange for proceeds from the sale of one or more series of Additional Transition Bonds;

2. CE Issuer, to issue and sell Additional Transition Bonds in an aggregate principal amount not to exceed approximately $2 billion (as authorized and approved by the Texas Commission);

3. CE Issuer, to enter into hedging transactions and arrangements and credit enhancement transactions to reduce certain interest rate and credit risks associated with the Additional Transition Bonds;

4. CEHouston Electric, or any successor entity or another affiliate, to provide services to CE Issuer related to the Transition Property and to enter into one or more Transition Property Servicing Agreements, as described below;

5. CEHouston Electric, or any successor entity or another affiliate, to provide administrative services to CE Issuer and to enter into one or more Administration Agreements, as described below;

6. CE Issuer, to use the proceeds from the Additional Transition Bonds to pay the expenses of issuance and to purchase the Transition Property from CEHouston Electric;

7. CEHouston Electric and Utility Holding, to pay dividends out of capital or unearned surplus, from the Transition Property sale proceeds (or some portion of the proceeds), from CEHouston Electric to Utility Holding and from Utility Holding to CenterPoint;

8. CEHouston Electric, to enter into:

(a) Indemnity provisions in the Transition Property Sale Agreement, indemnifying CE Issuer, the trustee and certain of their affiliates; and

(b) As a service provider, to enter into indemnity provisions of the Transition Property Service Agreement, indemnifying CE Issuer, the trustee, certain affiliates of the trustee and the Texas Commission (for the benefit of CEHouston Electric's customers);

9. CE Issuer, to enter into indemnity provisions in its limited liability company agreement, through which it may indemnify its managers; and

10. CEHouston Electric, to make capital contributions to CE Issuer and, subject to certain limitations, receive interest and other investments earnings on them.

II. Background

In addition to introducing competition to the Texas electric utility industry, by requiring integrated utilities to separate their generating, transmission and distribution and retail sales functions, Applicants state that the Texas Restructuring Law permits utilities to recover certain of certain ''stranded'' or other ''transition'' costs associated with transition to a competitive retail electric market in Texas.[5] Applicants explain that the Restructuring Law permits recovery of the stranded costs, and other transition related costs, providing two mechanisms, either, or both, of which the Texas Commission may use to permit a utility to recover transition costs: (1) Non-bypassable ''competition transition charges'' (''CTCs'') imposed on retail electric customers' bills or (2) the issuance of transition bonds, securitizing non-bypassable ''transition charges'' imposed on customers, which pay for the bonds (''Transition Charges'').[6] Applicants' request in this Application involves the latter mechanism.[7]

Applicants state that the Texas Restructuring Law requires transition bonds to be repaid by retail customers, over a period of no more than 15 years, through the imposition of the non-bypassable Transition Charges.[8] Under

[1] By its order dated Nov. 30, 2004, the Commission previously authorized CenterPoint to form and capitalize CenterPoint Energy Transition Bond Company II, LLC, to issue the Additional Transition Bonds and, in its order dated June 29, 2005, the Commission previously discussed the bonds' financial effect on the CenterPoint system's capitalization. *See CenterPoint Energy, Inc., et al.,* Holding Co. Act Release No. 27919; *CenterPoint Energy, Inc., et al.,* Holding Co. Act Release No. 27989 (''June 29, 2005 Omnibus Financing Order''), respectively.

[2] Applicants state that the amount of the proposed bonds is a projection, as it is based on an assumption that issuance will be prior to Dec. 31, 2006 and the total amount of Additional Transition Bonds is also subject to a further determination of the Texas Public Utility Commission (''Texas Commission'').

[3] The Texas Restructuring Law (''Restructuring Law'') became effective on Sept. 1, 1999, to permit companies to compete for retail electric customers, among other things. The Restructuring Law also required the Texas Commission to administer the requirement that integrated utilities separate their generating, transmission and distribution and retail sales functions.

[4] Applicants state that, in October 2001, CenterPoint Energy Transition Bond Company, LLC (formerly known as Reliant Energy Transition Bond Company, LLC) (''Transition Bond Company I''), a special purpose, wholly owned subsidiary of CEHouston Electric, issued $749 million of the Series 2001–1 Transition Bonds. Applicants also note that they have referred to CEHouston Electric as the ''T&D Utility'' in previous filings and that it may be so referred to in certain of the exhibits to this Application.

[5] Applicants state that the Restructuring Law allows a utility to recover the amount by which the market value of its generating assets is below the regulatory book value of the assets as of the end of 2001. It also allows a utility to recover certain other transition costs by a true-up procedure (*i.e.,* calculating the difference between the Texas Commission's projected market prices for generation during 2002 and 2003 and the actual market prices for generation occurring in 2002 and 2003). The statute requires these determinations to be made by the Texas Commission in ''true-up proceedings.''

[6] Applicants state that the Restructuring Law provides, in general, that retail electric customers within the utility's service territory as it existed on May 1, 1999, will be assessed CTCs, regardless of whether the retail electric customers receive service from the utility that historically served them or another entity. CTCs are similar to transition charges in the way they are imposed and collected, but CTCs are not securitized.

[7] Applicants state that, separately, in January 2005, CEHouston Electric filed an application with the Texas Commission for a CTC order, to recover the entire true-up balance (plus accrued interest and excess mitigation credits), and that, on July 14, 2005, CEHouston Electric received an order allowing it to collect approximately $570 million in CTC over 14 years, plus interest at an annual rate of 11.075% (''CTC Order''). Based on this interest permitted, it is expected that the amount will total to approximately $600 million by the end of the third quarter of 2005, when the CTC is expected to be implemented. Applicants state that the CTC Order also allows CEHouston Electric to collect approximately $24 million of rate case expenses over three years.

[8] Applicants explain that the Restructuring Law authorizes the Texas Commission to issue financing orders approving transition bonds to recover certain ''qualified costs.'' Qualified costs of an electric utility include, among other things, the costs of issuing, supporting and servicing transition bonds and any costs of retiring and refunding existing debt and equity securities in connection with their issuance. The Restructuring Law permits a utility, its successors or a third-party assignee of a utility, to issue transition bonds. Under the Restructuring

Continued

the statute, transition bonds will be secured by, and payable from, Transition Property, which includes the right to impose, collect and receive the Transition Charges.[9] Applicants state that transition bonds may be issued through a special purpose entity designed to be a bankruptcy remote entity.[10] The obligations on the bonds are required to be non-recourse to the utility and to all other entities in the electric utility system, other than issuer, the special purpose entity.

In December 2004, the Texas Commission authorized CEHouston Electric [11] to recover about $2.4 billion of stranded costs and interest accrued through Aug. 31, 2004 (''True-Up Order''). Applicants state that, on Mar. 16, 2005, the Texas Commission authorized the proposed Additional Transition Bonds, allowing CEHouston Electric to securitize approximately $1.494 billion, plus (1) the amount of excess mitigation credits provided by CEHouston Electric after Aug. 31, 2004, (2) interest on the stranded cost amount accrued after Aug. 31, 2004, and through the date of issuance of the transition bonds, and (3) certain up-front qualified costs related to the issuance of the Additional Transition Bonds (''Texas Financing Order'').[12] On Nov. 30, 2004, as noted previously, the Commission authorized Centerpoint to form and capitalize CE Issuer (*i.e.*, Centerpoint Energy Transition Bond Company II, LLC), for the purpose of issuing the Additional Transition Bonds.[13]

III. The Proposed Transactions

A. Additional Transition Bonds

Applicants request authority to issue the Additional Transition Bonds through CE Issuer, in one or more series, each made up of one or more classes, up to an amount, anticipated to be approximately $2 billion (as authorized by the Texas Commission), secured by CE Issuer's right, title and interest in and to the Transition Property. Applicants also ask that they be authorized to issue the different series, with different interest rates (which may be at fixed or floating rates) and amortizations of principal and that each series have classes with different interest rates and amortizations of principal. Applicants state that, in accordance with the requirements of the Restructuring Law, the Additional Transition Bonds will be required to be fully repaid within 15 years of the date of issuance.[14] CenterPoint projects that, with interest from Aug. 31, 2004 to the date of issuance (and assuming the Additional Transition Bonds are issued no later than Dec. 31, 2006), the amount of Additional Transition Bonds issued would be no more than $2 billion, although the total amount of Additional Transition Bonds issued will be determined by the Texas Commission before the bonds are issued.

Applicants further request that CEHouston Electric be authorized to transfer its right to receive Transition Charges to CE Issuer. Applicants state that, once CEHouston Electric transfers its right to receive Transition Charges to CE Issuer, all revenues and collections resulting from them, and its other rights and interests received under the Texas Financing Order, will constitute Transition Property. Applicants state that the Transition Property includes the right to impose, collect and receive (through the transition charges payable by retail electric customers within CEHouston Electric's service territory) an amount sufficient to recover the CEHouston Electric's ''qualified costs,'' including the right to receive transition charges in amounts and at times sufficient to pay principal and interest and to make other deposits in connection with the Additional Transition Bonds (authorized in the Texas Financing Order).[15]

Applicants also state that the Restructuring Law provides that the issuer of the transition bonds will have a valid and enforceable lien and security interest in the transition property derived from the transition charges and created by a Texas financing Order. Applicants state, as well, that the Restructuring Law also provides that an electric utility's (or an assignee's) transfer of transition property is a ''true sale'' under state law.

Applicants state that a trustee will be appointed under the indenture governing the Additional Transition Bonds and that the trustee, and its investment authority, will be subject to certain constraints.[16] The trustee will provide to the holders of record of the Additional Transition Bonds regular reports (containing information concerning, among other things, CEHouston Electric and the bonds' collateral) prepared by the servicer, described below.[17]

Law, proceeds of transition bonds must be used to reduce the amount of recoverable qualified costs through the refinancing or retirement of the electric utility's debt or equity, and may have a maximum maturity of 15 years.

[9] Applicants also state that the State of Texas pledged in the Restructuring Law that it will not take or permit any action that would impair the value of the transition property or, except as permitted in connection with the true-up adjustment authorized by the statute, reduce, alter or impair the transition charges until the principal, interest and premium, and any other charges incurred and contracts to be performed in connection with transition bonds, have been paid and performed in full. Applicants state that the Restructuring Law does require the Texas Commission to review and adjust the transition charges at least annually, within 45 days of the anniversary of the date of the issuance of the transition bonds in order to: (1) Correct any overcollections or undercollections during the preceding 12 months and (2) provide for recovery of amounts sufficient to pay timely all debt service and other amounts and charges associated with the transition bonds.

[10] *See* notes 1 and 8, above. The Commission previously authorized CenterPoint to form and capitalize CenterPoint Energy Transition Bond Company II, LLC, to issue the Additional Transition Bonds. *CenterPoint Energy, Inc., et al.,* Holding Co. Act Release No. 27919 (Nov. 30, 2004). As noted above, the Restructuring Law permits a utility, its successors or a third party assignee of a utility, to issue transition bonds.

[11] Applicants explain that, on Mar. 31, 2004, CEHouston Electric, Texas Genco, LP and Reliant Energy Retail Services, LLC, applied to the Texas Commission for an order determining CEHouston Electric's 2004 true-up balance. Applicants state that the Restructuring Law requires the power generation company and the retail electric provider that are ''affiliated with'' the former integrated electric utility to be parties to the application. Reliant Energy Retail Services was an applicant even though, at the time, it no longer had any legal affiliation with CenterPoint Energy or its subsidiaries.

[12] Applicants state that this amount was also subject to adjustments reflecting certain deferred taxes, accrual of interest and payment of excess mitigation credits after Aug. 31, 2004. Applicants also explain that a financing order, once effective, is irrevocable and not subject to reduction, impairment or adjustment by the Texas Commission (including the transition charges authorized in the order), except for annual and interim true-up adjustments made under the Restructuring Law.

[13] *See* notes 1 and 10, above.

[14] Applicants expect that it will be a condition of issuance that each series of Additional Transition Bonds be rated Aaa by Moody's Investors Service, Inc., AAA by Standard and Poor's Rating Services, a Division of The McGraw-Hill Companies and AAA by Fitch, Inc. In addition, Applicants state that CEHouston Electric will comply with the Commission's investment grade criteria contained in the Commission's June 29, 2005 Omnibus Financing Order. *See also* note 1, above.

[15] *See also* notes 9, 10 and 13, above. Under the Texas Financing Order, CEHouston Electric's qualified costs include a portion of CEHouston Electric's 2004 true-up balance, up-front costs of issuing, supporting and servicing the Additional Transition Bonds and certain related costs of retiring and refunding CEHouston Electric's existing debt and equity securities.

[16] Deutsche Bank Trust Company Americas will be the initial trustee under the indenture governing the Additional Transition Bonds.

[17] As noted above, other transition bonds have been issued by Applicants. Applicants note with respect to the previous bonds that, although CEHouston Electric is the servicer of the Series 2001–1 Transition Bonds and is expected to be the initial servicer of the Additional Transition Bonds, CE Issuer is a separate legal entity from Transition Bond Company I and the Additional Transition Bonds issued by CE Issuer will be payable from collateral that is separate from the collateral securing the Series 2001–1 Transition Bonds. Moreover, Applicants note that Transition Bond Company I has no obligations for the Additional Transition Bonds that will be issued by CE Issuer

In addition, Applicants request authority to enter into certain transactions for the purpose of protecting CE Issuer against certain credit risks that may be associated with the Additional Transition Bonds. Applicants explain that these transactions or instruments, which may include surety bonds, financial guaranty insurance policies or letters of credit, among other things, are intended to protect against losses or delays in scheduled payments on the Additional Transition Bonds.

B. Hedging Transactions

Applicants request that CE Issuer be authorized to hedge its interest rate risk using interest rate swaps or other financial derivatives.[18] Applicants state that each hedging arrangement will be treated for accounting purposes in accordance with U.S. generally accepted accounting principles and that Applicants will comply with Statement of Financial Accounting Standards 133 and Statement of Financial Accounting Standards 138 (''Accounting for Certain Derivative Instruments and Certain Hedging Activities'') or other standards applicable to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

C. Various Agreements

1. Transition Property Servicing Agreement

Applicants request that CEHouston Electric be authorized to act on behalf of CE Issuer, as the servicer, of the Additional Transition Bonds. They propose that the servicer of the bonds, as the agent of CE Issuer, manage, service, administer and make collections related to the Transition Property.[19] Applicants state that, while they anticipate that CEHouston Electric will be the servicer, they request that the trustee be authorized to appoint an unaffiliated third party as the servicer under certain conditions. Applicants state that the appointment of a third party as the servicer will not adversely affect Additional Transition Bonds' investment grade ratings.

Applicants also request an exemption from the ''at cost'' requirements in connection with the servicing fee. Applicants propose that the servicer be entitled to receive an aggregate annual servicing fee under the terms of the transition property servicing agreement. Applicants state that the servicing fee must be comparable to similar fees charged in market-based, arm's length transactions for CE Issuer to qualify for the status of a bankruptcy remote entity and to satisfy related rating agency and other legal requirements. Applicants propose that the fee be set at an annual level of not more than one percent of the initial principal amount of the Additional Transition Bonds. Applicants state that, although they expect the servicing fee to approximate the actual costs of providing the services, they cannot be certain that the servicing fee will meet the ''at cost'' requirements of section 13(b) of the Act and other applicable rules.

2. Administration Agreement

Applicants request that CEHouston Electric be authorized to provide administrative services to CE Issuer. They propose that CEHouston Electric provide administrative services to CE Issuer under an administration agreement, providing ordinary clerical, bookkeeping and other corporate administrative services necessary and appropriate.[20]

Applicants also request an exemption from the ''at cost'' requirements in connection with the administration fee. Applicants propose that the administrator be entitled to receive a fixed fee, plus reimbursable expenses. Applicants state that the administrative fee must be comparable to similar fees charged in market-based, arm's length transactions for CE Issuer to qualify for the status of a bankruptcy remote entity and to satisfy related rating agency and other, legal requirements. Applicants state that, although they expect the administrative fee to approximate the actual costs of providing the services, they cannot be certain that the fee will meet the ''at cost'' requirements of section 13(b) of the Act and other applicable rules.

D. Dividend Authority and Use of Proceeds

Applicants request that CE Issuer be authorized to use the proceeds from the issuance of the Additional Transition Bonds to pay associated issuance expenses and to purchase the Transition Property from CEHouston Electric. In addition, Applicants request that CEHouston Electric be authorized to use proceeds received from CE Issuer to reduce stranded costs, through the retirement of debt or equity or both, or to be distributed to Utility Holding and to CenterPoint through either the payment of dividends or the settlement of intercompany payables.[21] Applicants state that they intend to maintain CEHouston Electric's capital structure at the approximately 60% debt to 40% equity target levels (exclusive of the Additional Transition Bonds).[22]

E. Indemnifications

Applicants also request that they be authorized to enter into various indemnity agreements associated with the transition property sale agreement and transition property servicing agreement. Applicants explain that CEHouston Electric will be required to indemnify the Texas Commission (for the benefit of CEHouston Electric's customers), CE Issuer, the trustee and certain of their affiliates for various activities required in connection with the issuance and administration of the Additional Transition Bonds and, similarly, under the limited liability company agreement, CE Issuer will be

and, similarly, CE Issuer will have no obligations for the Series 2001–1 Transition Bonds.

[18] Applicants state that CE Issuer may enter into certain interest rate swaps or other transactions for the purpose of hedging a series or class of floating rate Additional Transition Bonds. They explain that interest rate swaps and other hedging arrangements may be used, among other things, to fix synthetically the interest on floating rate Additional Transition Bonds.

[19] The servicer will be responsible for, among other things, calculating, billing and collecting the transition charges from retail electric providers, submitting requests to the Texas Commission to adjust these charges, monitoring the collateral for the transition bonds and taking certain actions in the event of non-payment by a retail electric provider.

[20] These services may include, without limitation: (1) Maintaining CE Issuer's general accounting records; (2) preparing and filing required documents; (3) preparing and filing income, franchise or other tax returns; (4) preparing minutes of meetings of CE Issuer's managers; (5) maintaining executed copies of CE Issuer documents; (6) taking actions necessary for CE Issuer to keep in full effect its existence, rights and franchises as a limited liability company; (7) providing for the issuance and delivery of the Additional Transition Bonds; (8) providing for the performance by CE Issuer of its obligations and enforcement each of its rights under the indenture, the servicing agreement and the sale agreement; (9) providing for defense of any action, suit or proceeding; and (10) providing office space and ancillary services.

[21] Applicants state that the specific amount of proceeds to be used to retire debt and/or equity will depend on CEHouston Electric's capital structure and market conditions. They expect that approximately $1.3 billion of the securitization proceeds will be used to repay CEHouston Electric's term loan maturing in November 2005 (or any replacement credit facility or debt issuance if the proceeds have not been received by the maturity date). To the extent that proceeds may not be applied to repay that loan, they may be distributed to Utility Holding and CenterPoint, either through dividend payments or the settlement of intercompany payables. Applicants state that proceeds that are paid as a dividend by CEHouston Electric to Utility Holding and by Utility Holding then to CenterPoint may be used to reduce debt at CenterPoint and to otherwise improve the capital structure of the CenterPoint system. To the extent that proceeds received prior to the November 2005 maturity of the term loan may not be used to repay the loan, Applicants state that they may be contributed back to CEHouston Electric when the term loan matures.

[22] *See also* June 29, 2005 Omnibus Financing Order.

required to indemnify its managers in certain situations, as described in the Application.

F. CEHouston Electric Capitalization

Finally, Applicants also request an exemption from the Commission's 30% common equity ratio in order to carry out the Texas Financing Order, as discussed in the Commission's June 29, 2005 Omnibus Financing Order.[23] Applicants state that CEHouston Electric's common equity ratio is projected to decrease below the Commission's standard of 30% during part of the period that the Additional Transition Bonds are outstanding, because the Additional Transition Bonds are categorized as debt. Applicants state, however, that inasmuch as the bonds will be (1) non-recourse to CEHouston Electric and (2) serviced by Transition Charges cash flows in accordance with the Texas Financing Order (not CEHouston Electric utility operation revenues), the Additional Transition Bonds do not represent the type of financial leverage that the Commission's 30% common equity standard is intended to address.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[23] *See* note 1, above. As discussed in the June 29, 2005 Omnibus Financing Order, CEHouston Electric may have less than the Commission's common equity ratio standard 30% when the securitization debt of the Additional Transition Bonds is included. Applicants anticipate, however, that its equity ratio will improve as the Additional Transition Bonds are paid down, although it is not expected to reach 30% until 2010 with securitization debt included in the calculation. Applicants note that, in their request for the June 29, 2005 Omnibus Financing Order, they asked the Commission to take into account the particular nature of this debt in issuing that order.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52325; File No. SR–Amex–2005–052]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Integration of Regulatory Staff Into Floor Official Rulings and the Review of Floor Official Rulings and Expediting the Process for Appealing Floor Official Rulings

August 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On August 12, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] 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

The Exchange proposes to (1) amend Amex Rules 22(c), 115, 958A(d), 958A–ANTE(d), 118(n), 135A and Amex Rule 155, Commentary .05 to integrate regulatory staff into Floor Official rulings and the review of Floor Official rulings; and (2) amend Amex Rule 22(d) to expedite the process for appealing a Floor Official's ruling.

The text of the proposed rule change, as amended, is available on the Amex's Web site at *http://www.amex.com,* the Office of the Secretary, the Amex, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1 Amex made minor revisions to the proposed rule text and clarified certain details of its proposal. Amendment No. 1 replaced and superseded Amex's original filing in its entirety. The Commission made clarifications to the description in Item II, pursuant to telephone conversations with Amex, as noted herein. Telephone conversations between Nyieri Nazarian, Assistant General Counsel, Amex, and Rahman Harrison, Attorney, Commission, on August 23, 2005.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Incorporation of Regulatory Staff into Floor Official Rulings

Floor Officials are officers of the Exchange,[4] who are authorized to (1) make rulings on behalf of the Exchange with respect to certain matters that require a decision by the Exchange, and (2) resolve trading disputes submitted to them by members. Floor Official decisions are currently subject to same day, on-floor appeal at the request of an aggrieved member, first by an Exchange Official, then by a Governor and finally by a panel of three Governors.[5] The Exchange proposes to integrate regulatory staff into specified categories of Floor Official rulings and the review of Floor Official rulings (''Covered Rulings and Reviews'') on an advisory, *i.e.,* non-approving, basis. The Exchange believes that incorporation of regulatory staff in Covered Rulings and Reviews will contribute to a more consistent application of Exchange rules, and better ensure that proper documentation is completed.

The proposed rules would require a member of the regulatory staff to be present during a Floor Official's ruling on an advisory basis. This member of the regulatory staff would give his or her

[4] There are three levels of Floor Officials on the floor, each with ascending levels of responsibility: Floor Officials, Exchange Officials and Senior Floor Officials. All are considered to be Floor Officials. Article II, Section 3 of the Amex Constitution provides that the Chairman of the Board of Governors may appoint members of the Exchange and individuals employed by, or associated with, a member organization in a senior capacity as Exchange Officials to serve on committees of the Board. Amex Rule 21 provides for the appointment of Senior Floor Officials and Floor Officials.

[5] Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Rahman Harrison, Attorney, Commission, on August 23, 2005.

opinion on the matter and, although the Floor Official would be required to take this opinion into consideration, the Floor Official would not be required to rule according to the regulatory staff member's opinion. Once the Floor Official's decision is documented by the Floor Official, the participating regulatory staff member will also sign the form, indicating whether he or she agrees or disagrees with the ruling.[6] The regulatory staff member will be responsible for maintaining the documentation related to Covered Rulings and Reviews, and will forward such documentation, as appropriate, to the NASD Amex Regulation Division.[7]

Amex Rule 22(c) currently provides Floor Officials with the authority to make rulings in the following areas:

- Trading halts;
- Indications and reopenings;
- Non-regular way trades;
- Unusual market exception to the Commission's Firm Quote Rule;
- Turning Auto-Ex off;
- ITS disputes;
- Member disputes;
- Cancellations or revisions to trades;
- Voluntary publication of imbalances;
- Enforcing standards of floor decorum.

The Exchange proposes to amend Amex Rule 22(c) to require that a member of the regulatory staff participate in an advisory capacity in the following categories of Floor Official rulings:

- Unusual market exception to the Commission's Firm Quote Rule;
- ITS disputes;
- Member disputes;
- Cancellations or revisions to trades.

Corresponding amendments are also proposed to Amex Rules 115, 958A(d), 958A–ANTE(d), 118(n), 135A and 155, Commentary .05, which are the existing rules governing the application of the unusual market exceptions to the Commission's Firm Quote Rule and the Amex rules governing cancellation or revisions to trades. Amex Rules 936, 936C, 936–ANTE, 936C–ANTE, governing the cancellation and adjustment to equity and index option transactions, are not being amended because regulatory staff is already required to participate in such rulings. At the present time, regulatory staff would not be required to participate in Floor Official rulings relating to trading halts, indications and reopenings, non-regular way trades, turning Auto-Ex off, voluntary publication of imbalances, and enforcing standards of floor decorum.

Amex Rule 22(d)

The Amex also is proposing to amend Amex Rule 22(d) in two respects. Amex Rule 22(d) currently provides for three on-Floor tiers of review in the appeal of a Floor Official's initial ruling. First, any member wishing prompt on-Floor review of a Floor Official's market decision may present the matter to an Exchange Official, who may confirm, amend or overrule the decision. Second, an Exchange Official's decision may be promptly appealed to a Governor. Finally, a Governor's decision may be appealed to a panel of three Governors. A decision by a panel of three Governors is binding on members, with the option that at any point after establishing a loss or profit and complying with the highest decision made in a matter, either party to the matter may submit it to arbitration.[8] The Exchange is proposing to amend Amex Rule 22(d) to clarify that Senior Floor Officials have the same authority as Governors with respect to matters arising on the Floor that require review or action by Governors.[9] The amendment will replace each reference to ''Governor'' with ''Senior Floor Official.''[10]

Second, the Exchange proposes to amend Amex Rule 22(d) to eliminate the second tier in the current review process, *i.e.,* review of an Exchange Official's decision by a Governor. The proposed rule will provide that a Floor Official's initial decision will be reviewable by an Exchange Official and then a three Senior Floor Official panel. The Exchange believes that two levels of on-Floor review following a Floor Official's original decision are sufficient to assure a fair and impartial review and that three levels of on-Floor review may unnecessarily delay the resolution of disputed matters. The Exchange notes that under the proposal, regulatory staff would advise and participate in each level of a review of a Floor Official decision or ruling that required the advice and participation of a member of the regulatory staff in the initial Floor Official ruling. The increased involvement of regulatory staff should help ensure that rulings are in accordance with applicable rules.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5)[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or

[6] Commentary .02 to Amex Rule 22 requires that a written record of all Floor Official decisions or rulings be documented on a form and prepared as soon as practicable after the decision or ruling is made.

[7] The NASD Amex Regulation Division will utilize documentation of such rulings, as appropriate, in order to verify that an appropriate ruling was obtained as required by applicable Amex rules, as well as to enable review of situations in which a Floor Official may have issued an improper ruling contrary to the advice of the regulatory staff.

[8] A decision to cancel or revise an option trade may also be appealed to the Board of Governors. *See* Amex Rules 936, 936C, 936 ANTE and 936C ANTE.

[9] Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Rahman Harrison, Attorney, Commission, on August 23, 2005. The Commission recently approved an amendment to Amex Rule 21 which provides that: ''An Exchange Official who has been appointed as a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the Floor and require review or action by a Floor Governor or Senior Floor Official.'' Securities Exchange Act Release No. 51503 (April 7, 2005), 70 FR 19534 (April 13, 2005).

[10] Based on the recent amendment to Amex Rule 21 (*see supra* note 9), the Exchange also proposes to make conforming changes to Amex Rule 118(n)(iii) (Trading in Nasdaq National Market Securities) and Amex 135A(c) (Cancellations of, and Revisions in, Transactions Where Both the Buying and Selling Members Do Not Agree to the Cancellation or Revision) to replace ''Governor'' and ''Floor Governor,'' as applicable, with ''Senior Floor Official.'' Amex Rules 118(n)(iii) and 135A(c) address the process for review of transactions, and the ability of a Floor Governor to declare a transaction null or void, in the event of an operational malfunction or ''extraordinary market conditions.'' Telephone conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and Rahman Harrison, Attorney, Commission, on August 23, 2005.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

(ii) as to which the Amex consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–052. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2005–052 and should be submitted on or before September 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4727 Filed 8–29–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52326; File No. SR–CHX–2005–22]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Rule Interpretation Relating to Trading of Nasdaq National Market Securities in Sub-Penny Increments

August 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 17, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by CHX. The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX requests an extension, until January 31, 2006, the compliance date of new Rule 612 of Regulation NMS,[5] of a pilot rule interpretation (Article XXX, Rule 2, Interpretation and Policy .06 ''Trading in Nasdaq/NM Securities in Subpenny Increments'') which requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer (''NBBO'') by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot, which was approved in conjunction with exemptive relief granted by the Commission to allow for trading in Nasdaq National Market securities in sub-penny increments, expires on August 29, 2005. The Exchange proposes that the pilot remain in effect until January 31, 2006, the compliance date of Rule 612.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (Article XXX, Rule 2, Interpretation and Policy .06 ''Trading in Nasdaq/NM Securities in Subpenny Increments'')[6] that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the NBBO by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot, which was approved in conjunction with exemptive relief granted by the Commission to allow for trading in Nasdaq National Market securities in sub-penny increments, has been extended many times and now is set to expire on August 29, 2005.[7] The

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 242.612. The Commission recently extended the compliance date for Rule 612 to January 31, 2006. *See* Securities Exchange Act Release No. 52196 (August 2, 2005) 70 FR 45529 (August 8, 2005).

[6] *See* Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001) (SR–CHX–2001–07).

[7] *See* Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending pilot through January 14, 2002); Securities Exchange Act Release No. 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10,

Exchange is not proposing any substantive (or typographical) change to the pilot; rather, the Exchange proposes that the pilot remain in effect through January 31, 2006, the compliance date of Rule 612 of Regulation NMS.

2. Statutory Basis

CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] CHX believes the proposal is consistent with Section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade; to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes would impose any burden on competition.

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 Exchange asserts the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder because the proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.[12] The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative immediately so that the pilot can continue uninterrupted.

The Commission hereby grants the request.[13] The Commission believes that such waiver is consistent with the protection of investors and the public interest because it will allow the protection of customer limit orders provided by the pilot to continue without interruption and designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CHX–2005–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–CHX–2005–22. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2005–22 and should be submitted on or before September 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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2002) (extending the pilot through January 31, 2003); 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003); 47951 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending the pilot through December 1, 2003); 48871 (December 3, 2003), 68 FR 69097 (December 11, 2003) (extending pilot through June 30, 2004); 49994 (July 9, 2004), 69 FR 42486 (July 15, 2004) (extending pilot through June 30, 2005); 51944 (June 30, 2005), 70 FR 39539 (August 8, 2005) (extending pilot through August 29, 2005, the effective date of Rule 612).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] In addition, Rule 19b-4(f)(6)(iii) states that the Exchange must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission. The Commission has determined to waive the requirement in this case.

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52332; File No. SR–NASD–2005–094]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration

August 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 22, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On August 5, 2005, NASD filed amendment No. 1 to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 10308 of the NASD Code of Arbitration Procedure (''Code'') relating to the classification of arbitrators to further ensure that individuals with significant ties to the securities industry do not serve as public arbitrators. Below is the text of the proposed rule change.[4] Proposed new language is italics; proposed deletions are in brackets.

* * * * *

10308. Selection of Arbitrators

(a) Definitions

(1) through (3) No change

(4) ''non-public arbitrator''

The term ''non-public arbitrator'' means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past 5 years, was:

(i) associated with*, including registered through,* a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);

(C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) ''public arbitrator''

(A) The term ''public arbitrator'' means a person who is otherwise qualified to serve as an arbitrator and:

(i) is not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(ii) was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or more;

(iii) is not an investment adviser;

(iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); [and]

(v) *is not employed by, and is not the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business;*

(vi) *is not a director or officer of, and is not the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business; and*

(*vii*) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) No change

(6) through (7) No change

(b) through (f) No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the arbitrator classification criteria in Rule 10308 of the Code to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations.

The Code classifies arbitrators as public or non-public. When investors have a dispute with member firms or associated persons in NASD arbitration, they are entitled to have their cases heard by a panel consisting of either a single public arbitrator, or a majority public panel consisting of two public arbitrators and one non-public arbitrator, depending on the amount of the claim.[5]

Under Rule 10308(a)(4) of the Code, a person is classified as a non-public arbitrator if he or she:

(A) Is, or within the past 5 years, was:

(i) Associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) Registered under the Commodity Exchange Act;

(iii) A member of a commodities exchange or a registered futures association; or

(iv) Associated with a person or firm registered under the Commodity Exchange Act;

(B) Is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);

(C) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

The criteria for public arbitrators are set forth in Rule 10308(a)(5) of the Code.

[3] The amendment clarified the rule's text and purpose, and revised the effective date of the rule.

[4] The rules proposed in this filing will be renumbered as appropriate following Commission approval of the pending revisions to the NASD Code of Arbitration Procedure for Customer Disputes; *see* Securities Exchange Act Release No. 51856 (June 15, 2005), 70 FR 36442 (June 23, 2005) (SR–NASD–2003–158); and the NASD Code of Arbitration Procedure for Industry Disputes; *see* Securities Exchange Act Release No. 51857 (June 15, 2005), 70 FR 36430 (June 23, 2005) (SR–NASD–2004–011).

[5] The panel composition for intra-industry disputes (not involving any parties who are investors) is governed by Rule 10202. Depending on the nature of the dispute, intra-industry panels may consists of all public arbitrators, all non-public arbitrators, or a majority of public arbitrators. The arbitrator classification provisions of Rule 10308 apply to all such panels.

In general, an individual will be classified as a public arbitrator if he or she is qualified to serve as an arbitrator and is not either personally engaged in certain activities that would make him or her non-public, or the immediate family member of a person engaged in such activities.

In order to ensure that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations, NASD believes that revisions to the definitions of public and non-public arbitrators are warranted.

NASD is proposing to amend the definition of public arbitrator to exclude individuals who work for, or are officers or directors of, an entity that controls, is controlled by, or is under common control with, a broker/dealer, or who have a spouse or immediate family member who works for, or is an officer or director of, an entity that is in such a control relationship with a broker/dealer. Currently, such individuals are not covered by the rule. For example, a person who works for a real estate firm that is under common control with a broker/dealer and perhaps shares the same corporate name may be classified as a public arbitrator under current rules. Since investors may feel that an arbitrator who is employed by a firm in such a control relationship with a broker/dealer is not truly ''public,'' NASD is proposing to revise the definition of public arbitrator to exclude any person who is employed by, or who has a spouse or an immediate family member who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business.[6] Similarly, NASD also proposes to exclude from the definition of public arbitrator persons who are officers or directors of, or who have a spouse or an immediate family member who is an officer or director of, an entity in a control relationship with a broker/dealer.

In addition, NASD is proposing to revise the definition of non-public arbitrator to clarify that persons who are registered with a broker/dealer may not be classified as public arbitrators. Under current rules, arbitrators who are associated with a broker or dealer are considered non-public. In the financial services industry, it is not uncommon for a person to be employed by one company (such as a bank or insurance company) and to be registered to sell securities through another company (such as an affiliated broker/dealer). NASD believes that there may be some uncertainty among arbitrators who work for entities in a control relationship with a broker/dealer as to whether they are associated with a broker/dealer for purposes of Rule 10308, even though they hold licenses through the broker/dealer. Since the definition of ''person associated with a member'' in the NASD By-Laws includes persons who are registered with a broker/dealer, regardless of their status as employees, such persons should be considered non-public arbitrators. Therefore, NASD proposes to amend the definition of non-public arbitrator to specifically include anyone registered through a broker/dealer.[7]

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval. The effective date will be no later than 60 days following publication of the Notice to Members announcing Commission approval.[8]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(6) of the Act,[10] in particular, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that, by providing further assurance to parties that individuals with significant ties to the securities industry are not able to serve as public arbitrators in NASD arbitrations, the proposed rule change will enhance investor confidence in the fairness and neutrality of NASD's arbitration forum.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission particularly urges commenters to consider the proposed amendment to the definition of ''non-public arbitrator.'' Specifically, the NASD has proposed to amend Rule 10308(4)(A)(i) to clarify that persons ''associated'' with a broker or a dealer include persons ''registered through'' a broker or a dealer because there has been some uncertainty among certain

[6] For purposes of this rule, the term ''control'' has the same meaning that it has for purposes of Form BD, which broker/dealers use to register with NASD and to make periodic updates. Specifically, control is defined as ''The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company.'' *See* Uniform Application for Broker-Dealer Registration (Form BD).

[7] For purposes of Rule 10308(a)(4)(A)(i), the term ''including'' is expanding or illustrative, not exclusive or limiting. The use of the term ''including but not limited to'' in Rule 10321(d) of the Code is not intended to create a negative implication regarding the use of ''including'' without the term ''but not limited to'' in Rule 10308(a)(4)(A)(i) or other provisions of the Code.

[8] If an arbitrator's classification changes solely because of an amendment to the definitions in Rule 10308, the arbitrator's classification will be changed prospectively, that is, for future appointments only. In ongoing cases, staff will notify the parties of the prospective change in the arbitrator's classification. In such situations, because the arbitrator's classification was correct when the arbitrator was appointed, NASD normally will not grant challenges for cause based on a prospective change in classification. This provides continuity and avoids unnecessary disruption to ongoing cases. Challenges for cause still may be made based upon the disqualification and removal criteria in Rules 10308(d) and 10312(d).

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

arbitrators. Although it is clear under NASD rules that persons who are registered through a broker or a dealer are associated persons of that broker-dealer, is this amendment helpful?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–094 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–2001.

All submissions should refer to File Number SR–NASD–2005–094. 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 at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–094 and should be submitted on or before September 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4726 Filed 8–29–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52328; File No. SR–NYSE–2005–45]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend NYSE Rule 80A (Index Arbitrage Trading Restrictions) To Calculate Limitations on Index Arbitrage Trading Based on the NYSE Composite Index

August 24, 2005.

On June 28, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 80A (Index Arbitrage Trading Restrictions) relating to limitations on index arbitrage trading. The proposed rule change was published for comment in the **Federal Register** on July 25, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

Current NYSE Rule 80A provides for limitations on index arbitrage trading in any component stock of the S&P 500 Stock Price Index on any day that the Dow Jones Industrial Average (''DJIA'')[4] advances or declines at least 2%[5] from its previous day's closing value.[6] The NYSE proposes to amend NYSE Rule 80A to calculate the limitations on index arbitrage trading as provided in the rule based on the average closing value of the NYSE Composite Index® (''NYA''), replacing the current usage of the DJIA.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations thereunder. Specifically, the Commission finds the proposal to be consistent with Section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. According to the Exchange, the NYA is a better reflection of market activity with respect to the S&P 500 and thus, a better indicator as to when the restrictions on index arbitrage trading provided by NYSE Rule 80A should be triggered. Therefore, the Commission believes that it is consistent with the Act for the NYSE to amend NYSE Rule 80A to calculate limitations on index arbitrage trading based on the NYA.[10]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–2005–45) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4724 Filed 8–29–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 52051 (July 18, 2005), 70 FR 42608.

[4] ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

[5] Current NYSE Rule 80A provides that collars are based on a quarterly calculation of ''two percent value,'' which is 2%, rounded down to the nearest ten points, of the average closing value of the DJIA for the last month of the previous calendar quarter.

[6] NYSE Rule 80A's current limitations on index arbitrage trading provide that if the market advances by 2% or more, all index arbitrage orders to buy must be stabilizing (buy minus); similarly, if the market declines by 2% or more, all index arbitrage orders to sell must be stabilizing (sell plus). The stabilizing requirements are removed if the DJIA moves back to or within 1% of its closing value.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission notes that approval of the proposed rule change is based, in part, on the fact that NYSE Rule 80A affects only certain types of trading by NYSE members trading on the floor of the Exchange. The rule's cross-market implications are minimal. The Commission, therefore, believes that the NYSE should have considerable discretion in determining which index to apply under this rule. The Commission's approval of the proposed rule change should in no way be interpreted as an indication that a similar change to NYSE Rule 80B (Trading Halts Due to Extraordinary Market Volatility), which is integral to the cross-market trading halt procedures known as ''Circuit Breakers,'' would be subject to the same analysis or similarly approved by the Commission.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In June 2005, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2006. *See* 70 FR 37145 (June 28, 2005). After reviewing public comment received pursuant to the notice of proposed priorities, the Commission has identified its policy priorities for the upcoming amendment cycle and hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, the Commission has identified its policy priorities for the amendment cycle ending May 1, 2006, and possibly continuing into the amendment cycle ending May 1, 2007. While the Commission intends to address these priority issues, it recognizes that other factors, most notably changes that may be required as a result of *United States* v. *Booker,* 543 U.S. ____ (2005), 125 S.Ct. 738 (2005), as well as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all policy issues by the statutory deadline of May 1, 2006.

The Commission's policy priorities for the upcoming amendment cycle are as follows:

(1) Implementation of crime legislation enacted during the 108th Congress and the first session of the 109th Congress warranting a Commission response, including (A) the Family Entertainment and Copyright Act of 2005, Public Law 109–9; (B) the Intellectual Property Protection and Courts Amendment Act of 2004, Public Law 108–482; (C) the Anabolic Steroids Act, Public Law 108–358 (and as part of its work on this Act, examination of offenses involving human growth hormones under 21 U.S.C. 333(e)); (D) the Intelligence Reform and Terrorism Reform Act of 2004, Public Law 108–458; and (E) other legislation, amending statutory penalties and creating new offenses, that requires incorporation into the guidelines;

(2) Assessment of the Justice for All Act of 2004, Public Law 108–405, and other statutes pertaining to victims' rights;

(3) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States* v. *Booker,* including any appropriate guideline changes, and a report on the effects of *Booker* on federal sentencing, including an analysis of sentencing data collected within the first year of that decision;

(4) Continuation of its policy work regarding immigration offenses, specifically, offenses under §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States), and Chapter Two, Part L, Subpart 2 (Naturalization and Passports);

(5) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy, including the update of Commission research, in view of the Commission's 2002 report to Congress, *Cocaine and Federal Sentencing Policy;*

(6) Review, and possible amendment, of commentary in Chapter Eight (Organizations) regarding waiver of the attorney-client privilege and work product protections;

(7) Review, and possible amendment, of guideline provisions pertaining to firearms offenses, particularly the trafficking of firearms, and of departure provisions related to firearms offenses;

(8) Consideration of policy statements pertaining to motions under 18 U.S.C. 3582(c)(1)(A)(i) for sentence reductions for ''extraordinary and compelling reasons'';

(9) Resolution of a number of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts; and

(10) Review, and possible amendment, of pertinent guideline provisions to address structural issues regarding the Sentencing Table in Chapter Five, Part A, particularly ''cliff-like'' effects occurring between levels 42 and 43, and a possible adjustment to the offense level computation in cases in which the offense level exceeds level 43, and to address other miscellaneous and limited issues pertaining to the application of the sentencing guidelines.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo H. Hinojosa,

Chair.

[FR Doc. 05–17186 Filed 8–29–05; 8:45 am]

BILLING CODE 2210–40–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration, Office of Small Business Development Centers, National Advisory Board will be hosting its annual quarterly meeting to discuss such matters that may be presented by members, the staff of the U.S. Small Business Administration, and interested others. The meeting is scheduled for Wednesday, September 7, 2005, starting at 2:45 until 6 p.m. Eastern Standard Time. The meeting will take place at the Marriott Waterfront Hotel, 700 Aliceanna Street, Board Room, Baltimore, MD 21202.

Anyone wishing to attend must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–17171 Filed 8–29–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

A Dialogue with the Small Business Development Center (SBDC) National Advisory Board will take place at the Association of SBDCs National Conference in Baltimore, Maryland on Thursday, September 8, 2005, starting at 10:30 a.m. until noon. This session will take place at the Marriott Waterfront Hotel, 700 Aliceanna Street, Board Room, Baltimore, Maryland 21202. The ''Dialogue'' session is an opportunity for state and regional SBDC Directors to discuss any issues (programmatic, policy, etc.) regarding the SBDC Program with the Board.

Anyone wishing to attend must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small

Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045 or fax (202) 481–0681.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–17172 Filed 8–29–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 5178]

60-Day Notice of Proposed Information Collection: Department of State Acquisition Regulation (DOSAR), OMB Control Number 1405–0050.

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Department of State Acquisition Regulation (DOSAR).
- OMB Control Number: 1405–0050.
- Type of Request: Extension of Currently Approved Collection.
- Originating Office: Bureau of Administration, Office of the Procurement Executive (A/OPE).
- Form Number: N/A.
- Respondents: Any business, other for-profit, individual, not-for-profit, or household organizations wishing to receive Department of State contracts.
- Estimated Number of Respondents: 3,166.
- Estimated Number of Responses: 3,166.
- Average Hours Per Response: Varies.
- Total Estimated Burden: 274,320.
- Frequency: On occasion.
- Obligation to Respond: Voluntary.

DATES: The Department will accept comments from the public up to October 31, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *ginesgg@state.gov* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602.
- Fax: 703–875–6155.
- Hand Delivery or Courier: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 1701 North Ft. Myer Drive, Suite 603, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Gladys Gines, Procurement Analyst, Office of the Procurement Executive, Department of State, Washington, DC 20522, who may be reached on 703–516–1691.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

This information collection covers pre-award and post-award requirements of the DOSAR. During the pre-award phase, information is collected to determine which bids or proposals offer the best value to the U.S. Government. Post-award actions include monitoring the contractor's performance; issuing modifications to the contract; dealing with unsatisfactory performance; issuing payments to the contractor; and closing out the contract upon its completion.

Methodology:

Information is collected from prospective offerors to evaluate their proposals. The responses provided by the public are part of the offeror's proposals in response to Department solicitations. This information may be submitted electronically (through fax or e-mail), or may require a paper submission, depending upon complexity. After contract award, contractors are required to submit information, on an as-needed basis, and relate to the occurrence of specific circumstances.

Dated: August 4, 2005.

Corey M. Rindner,

Procurement Executive, Bureau of Administration, Department of State.

[FR Doc. 05–17229 Filed 8–29–05; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activities Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request the approval of a new information collection.

DATES: Comments on this notice must be received by September 29, 2005: attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Deborah Perkins, Departmental Office of Human Resources, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC 20590, (202) 366–9447

SUPPLEMENTARY INFORMATION:

Title: Applicant Background Questionnaire.

OMB Control Number: Pending.

Affected Public: Employees upon initial hire and applicants for positions.

Annual Estimated Burden: 100 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility as described; (b) the accuracy of the Department's estimate of burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, automated, electronic, mechanical or other technology. Comments should be addressed to the address in the preamble. All responses to this notice will be summarized and

included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Issued in Washington, DC, on August 22, 2005.

Steven Lott,

Manager, Strategic Integration, IT Investment Management Office.

BILLING CODE 4910–62–P

U.S. DEPARTMENT OF TRANSPORTATION

APPLICANT BACKGROUND QUESTIONNAIRE

The U.S. Department of Transportation requests that you voluntarily complete this form to assist the agency in evaluating and improving its efforts to publicize job openings and to encourage employment applications from a diverse group of qualified candidates. The Department will use the data you supply to determine how many applicants are from different groups and how many of these applicants are qualified for the job in question. The Department will then assess the effectiveness of specific outreach efforts and means of communicating information on job vacancies in light of this information. Personal identifying information will not be included in the tabulation of data.

The completion of this form is voluntary. This information will have no effect on the processing of your application or hiring decisions.

PRIVACY ACT INFORMATION: This information is provided pursuant to Public Law 93-579 (Privacy Act of 1974), December 31, 1974, for individuals completing Federal records and forms that solicit personal information. Authority: Section 7201 of title 5 of the U.S. Code and Section e-16 of title 42 of the U.S. Code

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is 2105-XXXX

The public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Transportation, Departmental Human Resources Office, 400 7th St, SW., Washington, DC 20590; and the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

Solicitation of this information is in accordance with "Federal Equal Opportunity Recruitment Program" (FEORP), found in part 720 of title 5, Code of Federal Regulations.

PLEASE COMPLETE THE FOLLOWING:

Name:	**Sex:** __ Male __ Female

Title, Grade, and Announcement Number of position for which you are applying:

Do you have a disability? ___ Yes ___ No

If yes, please provide information on your disability by selecting the appropriate category:

__ I do not chose to identify my disability
__ Total Deafness
__ Blind/uncorrectable visual impairment
__ Missing extremity(ies)
__ Partial paralysis
__ Complete paralysis
__ Convulsive disorder
__ Mental retardation
__ Mental or emotional illness
__ Severe distortion of limbs or spine
__ I have a disability but it is not listed

Please select one or more racial/and or national origin categories with which you most closely identify:

__ American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintains cultural identification through tribal affiliation or community attachment.
__ Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, Philippine Islands, Thailand, and Vietnam.
__ Black or African American	A person having origins in any of the black racial groups of Africa.
__ Hispanic	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race)
__ Native Hawaiian or other Pacific Islander	A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
__ White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

How did you find out about this vacancy? (Select all that apply)

_____ 1. Magazine/Newspaper
____ 2. Radio/Television Broadcast
____ 3. DOT Human Resources Office
____ 4. State Employment Office
____ 5. Government Recruitment at School
____ 6. Attendance at Conference, Meeting, or Job Fair (specify _____)
____ 7. Federal, State, or Local Job Information Center
____ 8. Friend or Relative Working for DOT
____ 9. Friend or Relative Not Working for DOT
____10. DOT's Careers in Motion Web Site (www.careers.dot.gov)
____ 11. Internet or Other Web Site
____ 12. State Vocational Rehabilitation Agency or U.S. Dept. of Veterans' Affairs
____ 13. Other (specify _____)

[FR Doc. 05–17213 Filed 8–29–05; 8:45 am]
BILLING CODE 4910–62–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–52]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

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 the disposition of certain petitions previously received. 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.

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 24, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2005–15862.
Petitioner: Mr. John Drew Atkin, IV.
Sections of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/Disposition: To permit Mr. John Drew Atkin, IV, to conduct certain flight training in certain Beechcraft Bonanza/Debonair airplanes that are equipped with a functioning throw-over control wheel.
Grant, 08/15/2005, Exemption No. 8126A.

Docket No.: FAA–2002–11579.
Petitioner: Federico Helicopters, Inc.
Sections of 14 CFR Affected: 14 CFR 133.33(d).
Description of Relief Sought/Disposition: To permit Federico Helicopters, Inc., to operate a Bell model 204 UH–1B helicopter that is type-certificated in the restricted category for external load operations under 14 CFR 21.25 over congested areas, subject to an approved congested area plan.
Denial, 08/15/2005, Exemption No. 8605.

Docket No.: FAA–2005–21976.
Petitioner: Moyer Aviation, Inc.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Moyer Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 08/15/2005, Exemption No. 8604.

Docket No.: FAA–2005–21007.
Petitioner: Bombardier Aerospace.
Sections of 14 CFR Affected: 14 CFR 121.344(f).
Description of Relief Sought/Disposition: To permit Bombardier Aerospace the operation of three new DHC–8 Series 300 airplanes without recording 88 parameters of flight data required by that regulation.
Denial, 08/11/2005, Exemption No. 8603.

Docket No.: FAA–2001–10091.
Petitioner: Mr. Lloyd E. Swenson.
Sections of 14 CFR Affected: 14 CFR 91.109(a).
Description of Relief Sought/Disposition: To permit Mr. Lloyd E. Swenson to conduct certain flight instruction and simulated instrument flights to meet recent experience requirements in certain Beechcraft airplanes equipped with a functioning throw-over control wheel in place of functioning dual controls.
Grant, 8/11/2005, Exemption No. 7593B.

Docket No.: FAA–2003–14802.
Petitioner: Executive Airlines, Inc. d.b.a. American Eagle.
Sections of 14 CFR Affected: 14 CFR 121.481, 121.487, 121.489, and 121.491.
Description of Relief Sought/Disposition: To permit Executive Airlines, Inc., d.b.a. American Eagle, to conduct its scheduled passenger-carrying operations to/from San Juan, Puerto Rico, and points in the Caribbean, under part 121, subpart Q, Flight Time Limitations and Rest Requirements: Domestic Operations (subpart Q), rather than under part 121, subpart R, Flight Time Limitations: Flag Operations (subpart R).
Grant, 8/10/2005, Exemption No. 8597.

Docket No.: FAA–2005–21877.
Petitioner: Freedom Airlines, Inc.
Sections of 14 CFR Affected: 14 CFR 121.434(c)(2)(ii).
Description of Relief Sought/Disposition: To permit Freedom Airlines, Inc., to substitute a qualified and authorized check airman in place of a Federal Aviation Administration inspector to observe a qualifying pilot in command while that pilot in command is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.434.
Grant, 8/10/2005, Exemption No. 8598.

Docket No.: FAA–2005–21717.
Petitioner: Yukon Eagle Air.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Yukon Eagle Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 8/08/2005, Exemption No. 8596.

Docket No.: FAA–2005–22016.
Petitioner: Yellow Bird Aviation, Inc.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Yellow Bird Aviation, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 8/08/2005, Exemption No. 8595.

Docket No.: FAA–2005–22014.
Petitioner: LR Services, Inc.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit LR Services, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 8/8/2005, Exemption No. 8594.

Docket No.: FAA–2002–13734.
Petitioner: Midwest Airlines, Inc.
Sections of 14 CFR Affected: 14 CFR 93.123.
Description of Relief Sought/Disposition: To permit Midwest Airlines, Inc., the use of slot number 1497 at Ronald Reagan Washington National Airport to augment its service from Ronald Reagan National Airport to Kansas City, Missouri.
Grant, 08/08/2005, Exemption No. 7370C.

Docket No.: FAA–2003–14563.
Petitioner: AirTran Airways, Inc.
Sections of 14 CFR Affected: 14 CFR 93.123.
Description of Relief Sought/Disposition: To permit AirTran Airways, Inc., to conduct three operations at Ronald Reagan Washington National Airport without the required slots.

Denial, 4/20/2005, Exemption No. 8541.

Docket No.: FAA–2002–12993.
Petitioner: Stallion 51 Corporation
Sections of 14 CFR Affected: 14 CFR 91.315.
Description of Relief Sought/ Disposition: To permit Stallion 51 Corporation, to provide initial and recurrent training and training under contract with the U.S. military in its two North American TF–51 airplanes certified as limited category civil aircraft.
Grant, 8/01/2005, Exemption No. 8593.

[FR Doc. 05–17215 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–50]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

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 the disposition of certain petitions previously received. 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.

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 24, 2005.

Anthony F. Fazio,
Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2004–19423.
Petitioner: Fresh Air, Inc.
Sections of 14 CFR Affected: 14 CFR 125.224.
Description of Relief Sought/ Disposition: To permit the Fresh Air, Inc., to operate a piston-powered large-aircraft, weighing more than 33,000 pounds maximum gross takeoff weight, without having a collision avoidance system installed in the aircraft.
Denial, 05/02/2005, Exemption No. 8550.

Docket No.: FAA–2005–20651.
Petitioner: Aero Union Corporation.
Sections of 14 CFR Affected: 14 CFR 91.611.
Description of Relief Sought/ Disposition: To permit Aero Union Corporation to ferry its eight Lockheed P–3 A/B (P–3) aircraft with one engine inoperative to a maintenance facility for the purpose of repairs.
Grant, 05/02/2005, Exemption No. 8551.

Docket No.: FAA–2003–15446.
Petitioner: JetBlue Airways Corporation.
Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit JetBlue Airways Corporation to substitute a qualified and authorized check airman or aircrew program designee for a Federal Aviation Administration inspector to observe a qualifying pilot in command who is completing a takeoff and a landing.
Grant, 05/04/2005, Exemption No. 8099A.

Docket No.: FAA–2001–9791.
Petitioner: NockAir Helicopter, Inc.
Sections of 14 CFR Affected: 14 CFR 133.43(a) and (b).
Description of Relief Sought/ Disposition: To permit NockAir Helicopter, Inc., to use its helicopters to perform aerial trapeze acts without using an approved external-load attachment or quick-release device for carrying a person on a trapeze bar.
Denial, 05/05/2005, Exemption No. 6685D.

Docket No.: FAA–2003–16196.
Petitioner: Alaska Air Carriers Association.
Sections of 14 CFR Affected: 14 CFR 43.3(g), 121.709(b)(3), and 135.443(b)(3).
Description of Relief Sought/ Disposition: To permit Alaska Air Carriers Association (AACA) and its certificated and appropriately trained pilots employed by an AACA-member airline to remove and reinstall passenger seats in aircraft type certificate for 10 to 19 passengers. The applicable aircraft are those operated by an AACA-member airline operation conducted under 14 CFR part 121 or 14 CFR part 135. The exemption also permits those pilots to make required logbook entries.
Grant, 05/05/2005, Exemption No. 8176A.

Docket No.: FAA–2003–15744.
Petitioner: Arctic Air Service.
Sections of 14 CFR Affected: 14 CFR 133.45(e)(1).
Description of Relief Sought/ Disposition: To permit Arctic Air Service to conduct Class D rotorcraft-load combination operations with an Agusta A 109E helicopter certificated in the normal category under 14 CFR part 27.
Grant, 5/05/2005, Exemption No. 8116A.

Docket No.: FAA–2005–20887.
Petitioner: Air Evac EMS, Inc.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Evac EMS, Inc., to operate certain aircraft under part 135 with a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 5/05/2005, Exemption No. 8552.

Docket No.: FAA–2005–21035.
Petitioner: Pelican Air, LLC.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Pelican Air, LLC, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 45/05/2005, Exemption No. 8553.

Docket No.: FAA–2001–8861.
Petitioner: MCI Worldcom Management Co., Inc.
Sections of 14 CFR Affected: 14 CFR 96.611.
Description of Relief Sought/ Disposition: To permit MCI Worldcom Management Co., Inc., to conduct ferry flights with one engine inoperative in MCI's Falcon Trijet airplane, Model No. 900, without obtaining special flight permit for each flight.
Grant, 5/05/2005, Exemption No. 5332G.

Docket No.: FAA–2003–15970.
Petitioner: Montana Aircraft, Inc.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Montana Aircraft, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 5/10/2005, Exemption No. 8120E.

Docket No.: FAA–2005–20760.
Petitioner: Sky Unlimited.
Sections of 14 CFR Affected: 14 CFR 91.223(b).

Description of Relief Sought/ Disposition: To permit Sky Unlimited, to operate its Beech 1900 aircraft after March 29, 2005, without being equipped with an approved terrain awareness and warning system that meets the requirements for Class B equipment I Technical Standard Order (TSO)–C151.

Denial, 5/12/2005, Exemption No. 8556.

Docket No.: FAA–2005–21106.

Petitioner: Mr. James G. Brendel.

Sections of 14 CFR Affected: 14 CFR 91.109(a).

Description of Relief Sought/ Disposition: To permit Mr. James G. Brendel, to conduct certain flight training in Beechcraft Bonanza/ Debonair type aircraft that are equipped with a functioning throw-over control wheel.

Grant, 5/12/2005, Exemption No. 8557.

Docket No.: FAA–2002–13311.

Petitioner: The Boeing Company.

Sections of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To permit Boeing's Organizational Designated Airworthiness Representatives to issue export airworthiness approvals for Class II and Class III products manufactured by Boeing-approved suppliers in 19 foreign countries and Taiwan.

Grant, 5/12/2005, Exemption No. 6860E.

Docket No.: FAA–2002–11840.

Petitioner: Davis Aerospace High School.

Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J.

Description of Relief Sought/ Disposition: To permit Davis Aerospace High School and Black Pilots Association, to conduct local sightseeing flights at the Detroit City Airport, Detroit, Michigan, on or about May 15, 2005, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 5/12/2005, Exemption No. 8554.

Docket No.: FAA–2001–9097.

Petitioner: Federal Express Corporation.

Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Federal Express Corporation, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 5/16/2005, Exemption No. 5711H.

Docket No.: FAA–2005–20935.

Petitioner: Pomona Valley Pilots Association.

Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J.

Description of Relief Sought/ Disposition: To permit Pomona Valley Pilots Association, to conduct local sightseeing flights for the Pomona Valley Air Fair at the Cable Airport, Upland, California, on July 9 and 10, 2005, for compensation or hire to raise money for scholarship funds for local colleges, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 5/16/2005, Exemption No. 8555.

Docket No.: FAA–2001–9282.

Petitioner: Air Transport Association of America, Inc.

Sections of 14 CFR Affected: 14 CFR 63.39(b)(1) and (2) and 121.425(a)(2)(i) and (ii).

Description of Relief Sought/ Disposition: To permit Air Transport Association of America, Inc., member airlines and other qualifying part 121certificate holders conducting part 121-approved flight engineer training programs to meet the certification requirements of § 121.425(a)(2)(i) and (ii) in a single flight check. The exemption also allows applicants in training for the flight check to take (1) the airplane preflight inspection portion of that flight check using an advanced pictorial means instead of an airplane, and (2) the normal procedure portion of that flight check in an approved flight simulation device. Furthermore, the exemption allows qualifying persons conducting part 63 flight engineer courses and all part 142 training center certificate holders conducting flight engineer training courses in accordance with part 63 to allow applicants who are training in preparation for the flight engineer practical test to take the normal procedures portion of that test in an approved flight simulation device.

Grant, 5/20/2005, Exemption No. 4901I.

Docket No.: FAA–2001–9379.

Petitioner: Air Transport Association of America, Inc.

Sections of 14 CFR Affected: 14 CFR 121.613, 121.619(a), and 121.625.

Description of Relief Sought/ Disposition: To permit Air transport Association, Inc., member airlines and other similarly situated part 121 operators to continue to dispatch airplanes under instrument flight rules when conditional language in a one-time increment of the weather forecast states that the weather at the destination, alternate airport, or both airports could be below the authorized weather minimums when other time increments of the weather forecast state that weather conditions will be at or above the authorized weather minimums.

Grant, 5/26/05, Exemption No. 3585O.

Docket No.: FAA–2005–21194.

Petitioner: Black Hills Aerial Adventures, Inc.

Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Black Hills Aerial Adventures Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 5/26/2005, Exemption No. 8559.

Docket No.: FAA–2003–14242.

Petitioner: World Airways, Inc.

Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit World Airways, Inc., to substitute a qualified and authorized check airman or aircrew program designee for an Federal Aviation Administration inspector to observe a qualifying pilot in command and who is completing initial or upgrade training specified in § 121.424 during at least on flight leg that include a takeoff and a landing.

Grant, 5/27/2005, Exemption No. 8058A.

[FR Doc. 05–17216 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–46]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

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 the disposition of certain petitions previously received. 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.

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 24, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2001–10875.
Petitioner: Fresh Water Adventures, Inc.
Sections of 14 CFR Affected: 14 CFR 91.323(b)(4).
Description of Relief Sought/ Disposition: To permit Fresh Water Adventures, Inc. to operate its Grumman Goose G–21A amphibian aircraft at a weight that is in excess of that airplane's maximum certified weight.
Grant, 06/01/2005, Exemption No. 7070C.

Docket No.: FAA–2002–12484.
Petitioner: Dynamic Aviation.
Sections of 14 CFR Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/ Disposition: To permit pilots employed by Dynamic Aviation, to conduct aerial applications of insecticides of pheromones for aircraft not equipped with a load jettisoning system; and to allow Dynamic Aviation pilots to operate additional aircraft under this exemption.
Grant, 06/01/2005, Exemption No. 7827E.

Docket No.: FAA–2005–21697.
Petitioner: George's Aviation Services, Inc.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit George's Aviation Services to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 06/05/2005, Exemption No. 8577.

Docket No.: FAA–2002–11723.
Petitioner: United States Coast Guard.
Sections of 14 CFR Affected: 14 CFR 91.117(b) and (c), 91.119(c), 91.159(a), 91.209(a).
Description of Relief Sought/ Disposition: To permit the United States Coast Guard to conduct air operations in support of drug law enforcement and drug traffic interdiction without meeting part 91 provisions governing: (1) aircraft speed, (2) minimum safe altitudes, (3) cruising operations for flights conducted under visual flight rules, and (4) use of aircraft lights.
Grant, 06/06/2005, Exemption No. 5231H.

Docket No.: FAA–2003–15806.
Petitioner: Ameristar Air Cargo, Inc.
Sections of 14 CFR Affected: 14 CFR 91.203(a) and (b), 121.153(a)(1).
Description of Relief Sought/ Disposition: To permit Ameristar Air Cargo, Inc., to operate its U.S. registered aircraft in domestic operations temporarily following the incidental loss or mutilation of that aircraft's unworthiness certificate or registration certificate, or both.
Grant, 06/06/2005, Exemption No. 8127A.

Docket No.: FAA–2005–20225.
Petitioner: Era Helicopters, LLC.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Era Helicopters, LLC to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 06/06/2005, Exemption No. 8484A.

Docket No.: FAA–2005–20948.
Petitioner: Honeywell International, Inc.
Sections of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit Honeywell's Organizational Designated Airworthiness representatives to issue export airworthiness approvals for Class II and Class III products manufactured at the Honeywell facility in Hermosillo, Sonora, Mexico.
Denial, 06/08/2005, Exemption No. 8566.

Docket No.: FAA–2005–21319.
Petitioner: Mentone Flying Club, Inc.
Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J.
Description of Relief Sought/ Disposition: To permit Mentone Flying Club, Inc., to conduct local sightseeing flights at the Fulton County Airport, Rochester, Indiana, for the Round Barn Festival on June 11, 2005, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 06/07/2005, Exemption No. 8560.

Docket No.: FAA–2005–21386.
Petitioner: Aris Helicopters.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Aris Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 06/09/2005, Exemption No. 8561.

Docket No.: FAA–2004–17395.
Petitioner: Flying Boat, Inc. d.b.a Chalk's International Airlines.
Sections of 14 CFR Affected: 14 CFR 121.354(b).
Description of Relief Sought/ Disposition: To permit Flying Boat, Inc. d.b.a Chalks International Airlines (Chalk's), to continue to operate four Grumman Turbine Mallard G73T aircraft after March 29, 2005, without having an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151 installed on these aircraft. The exemption also permits Chalk's to operate these aircraft without an approved terrain awareness display.
Grant, 06/10/2005, Exemption No. 8563.

Docket No.: FAA–2005–20146.
Petitioner: Mr. Mike Vande Guchte.
Sections of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353 and appendices I and J.
Description of Relief Sought/ Disposition: To permit Mr. Mike Vande Guchte to conduct local sightseeing flights at the Tulip City Airport, Holland, Michigan, on June 25, 2005, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 06/10/2005, Exemption No. 8564.

Docket No.: FAA–2003–15027.
Petitioner: Liberty Aviation Services, LLC.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Liberty Aviation Services, LLC, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.
Grant, 06/10/2005, Exemption No. 8035A.

Docket No.: FAA–2005–21090.
Petitioner: Air Arctic.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Arctic to

operate aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/10/2005, Exemption No. 8567.

Docket No.: FAA–2001–9782.
Petitioner: Clarke Mosquito Control.
Sections of 14 CFR Affected: 14 CFR 91.313(d).
Description of Relief Sought/ Disposition: To permit Clarke Mosquito Control to carry passengers in certain aircraft, certificated in the restricted category, while performing aerial-site survey flights.

Grant, 06/10/2005, Exemption No. 8568.

Docket No.: FAA–2001–9463.
Petitioner: Fare Share, Ltd.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Fare Share, Ltd., to operate certain aircraft without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/10/2005, Exemption No. 7542B.

Docket No.: FAA–2003–16067.
Petitioner: Corporate Air.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Corporate Air to operate certain aircraft without a TSO–C112 (Mode S) transponder installed on aircraft.

Grant, 06/10/2005, Exemption No. 8133A.

Docket No.: FAA–2004–17662.
Petitioner: Liberty Foundation, Inc.
Sections of 14 CFR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/ Disposition: To permit Liberty Foundation, Inc., to operate it's Boeing B–17 aircraft with registration no. N390TH and serial no. 44–85734 to carry passengers for compensation or hire on local flights for educational and historical purposes.

Grant, 06/10/2005, Exemption No. 8565.

Docket No.: FAA–2001–9352.
Petitioner: International Aerobatic Club.
Sections of 14 CFR Affected: 14 CFR 91.151(a)(1).
Description of Relief Sought/ Disposition: To permit International Aerobatic Club members to carry less than the visual flight rules fuel requirements under certain conditions.

Grant, 06/13/2005, Exemption No. 5745F.

Docket No.: FAA–2001–8754.
Petitioner: Everts Air Fuel, Inc.
Sections of 14 CFR Affected: 14 CFR 91.9(a).
Description of Relief Sought/ Disposition: To allow Everts Air Fuel, Inc., to operate its McDonnell Douglas DC–6 aircraft (registration no. N251CE, N444CE, N451CE, N888DG, and N400UA) at a 5-percent increased zero fuel weight and landing weight for all-cargo aircraft to provide supplies to people in isolated villages in Alaska.

Grant, 06/13/2005, Exemption No. 4296M.

Docket No.: FAA–2005–20224.
Petitioner: American Military Heritage Foundation.
Sections of 14 CFR Affected: 14 CFR 119.5(g) and 119.21(a).
Description of Relief Sought/ Disposition: To permit American Military Heritage Foundation to operate its Lockheed PV–2 aircraft (with registration no. N7265C and serial no.15–1362) to carry passengers for compensation or hire on local flights for educational historical purposes.

Grant, 06/17/2005, Exemption No. 8570.

Docket No.: FAA–2003–16009.
Petitioner: Mr. Richard E. Druschel.
Sections of 14 CFR Affected: 14 CFR 91.109(a) and (b)(3).
Description of Relief Sought/ Disposition: To permit Mr. Richard E. Druschel to conduct certain flight instruction and simulated instrument flights to meet the recent experience requirements in certain Beech aircraft equipped with a functioning throw-over control wheel in place of functioning dual controls.

Grant, 06/21/2005, Exemption No. 8125A.

Docket No.: FAA–2001–9195.
Petitioner: Helicopter Association International.
Sections of 14 CFR Affected: 14 CFR 135.213(a).
Description of Relief Sought/ Disposition: To permit Helicopter Association International and Association of Air Medical Services to conduct Emergency Medical Services departures under instrument flight rules in weather that is at or above visual flight rules minimums from airports or helicopters at which a weather report is not available from the U.S. National Weather Service (NWS), a source approved by the NWS, or a source approved by the Administrator.

Grant, 06/22/2005, Exemption No. 6175E.

Docket No.: FAA–2001–10013.
Petitioner: Federal Express.
Sections of 14 CFR Affected: 14 CFR 121.623(a) and (d), 121.643, and 121.645(e).
Description of Relief Sought/ Disposition: To permit Federal Express to conduct supplemental operations within the 48 contiguous United States and the District of Columbia using flight regulations for alternate airports as required by § 121.619 and the fuel reserve regulations as required by § 121.639 that are applicable to domestic operations.

Grant, 06/22/2005, Exemption No. 7608B.

Docket No.: FAA–2005–12110.
Petitioner: Nassau Helicopters.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Nassau Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/23/2005, Exemption No. 8572.

Docket No.: FAA–2000–8142.
Petitioner: St. Louis Helicopters, LLC.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit St. Louis Helicopters, LLC, to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/23/2005, Exemption No. 8489A.

Docket No.: FAA–2003–14964.
Petitioner: Republic Helicopters, Inc.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Republic Helicopters, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 06/23/2005, Exemption No. 6912C.

Docket No.: FAA–2005–21301.
Petitioner: Bell Helicopter Textron, Inc.
Sections of 14 CFR Affected: 14 CFR 21.231(a)(3).
Description of Relief Sought/ Disposition: To permit Bell Helicopters, Inc., to apply for Delegation Option Authorization for type, production, and airworthiness certification of transport category and special class rotorcraft.

Grant, 06/17/2005, Exemption No. 8574.

Docket No.: FAA–2004–19323.
Petitioner: Delta Air Lines, Inc.
Sections of 14 CFR Affected: 14 CFR 121.619.

Description of Relief Sought/ Disposition:

To permit Delta Airlines, Inc., certificated dispatchers and Delta Airlines, Inc., pilots in command relief from § 121.619 to the extent necessary to dispatch flights to domestic airports at which for at least 1 hour before and 1 hour after the estimated time of arrival at the destination airport the appropriate weather reports or forecasts, or any combination of them, indicate the ceiling may be reduced from at least 2,000 feet to 1,000 feet above the airport elevation, and visibility may be reduced from at least 3 miles to 2 miles.

Grant, 06/27/2005, Exemption No. 8575.

Docket No.: FAA–2003–14356.

Petitioner: TransMeridian Airlines.

Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit TransMeridian Airlines to substitute a qualified and authorized check airman or aircrew program designee for a Federal Aviation Administration inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 06/27/2005, Exemption No. 8087A.

Docket No.: FAA–2001–10028.

Petitioner: Pemco World Air Services.

Sections of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To permit Pemco's Organizational Designated Airworthiness Representatives to issue export airworthiness approvals for Class II and Class III products manufactured at the Pemco supplier facilities in Foligno, Italy, and at the Pemco distribution facility in Xiamen, China.

Grant, 06/29/2005, Exemption No. 7885B.

Docket No.: FAA–2003–14918.

Petitioner: Aero Charter & Transport, Inc.

Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit Aero Charter & Transport, Inc., to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in the aircraft.

Grant, 06/29/2005, Exemption No. 8576.

Docket No.: FAA–2004–18617.

Petitioner: Honeywell International, Inc.

Sections of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To permit Honeywell's Organizational Designated Airworthiness Representatives to issue export airworthiness approvals for Class II and Class III products manufactured at Honeywell facilities in the Peoples Republic of China, the Czech Republic, Germany, Indonesia, Poland, Romania, and Russia.

Grant, 06/29/2005, Exemption No. 8504A.

Docket No.: FAA–2003–15953.

Petitioner: Boston-Maine Airways, Corp. d.b.a. Pan Am Clipper Connection.

Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/ Disposition: To permit Boston-Maine Airways, Corp. d.b.a. Pan Am Clipper Connection, to substitute a qualified and authorized check airman or aircrew designee for a Federal Aviation Administration inspector to observe a qualifying pilot in command who is completing initial upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.

Grant, 06/29/2005, Exemption No. 8122A.

Docket No.: FAA–2005–21160.

Petitioner: Multi-Aero, Inc., d.b.a. Air Choice One.

Sections of 14 CFR Affected: 14 CFR 135.154(b)(2).

Description of Relief Sought/ Disposition: To permit Multi-Aero, Inc., d.b.a. Air Choice One, to operate its aircraft (registration no. N694MA) without being equipped with an approved terrain awareness and warning system that meets the requirements for Class B equipment in Technical Standard Order C151.

Denial, 06/21/05, Exemption No. 8571.

[FR Doc. 05–17217 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures policy and criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group will meet October 25, 2005, from 9 a.m. to 5 p.m. The Charting Group will meet October 26 and 27 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will held at the Air Line Pilots Association (ALPA), 535 Herndon Parkway, Herndon, VA 20172.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., PO Box 25082, Oklahoma City, OK 73125; telephone (405) 954–5852; fax (405) 954–2528. For information relating to the Charting Group, contact John A. Moore, FAA, National Aeronautical Charting Office, Requirements and Technology Staff, AVN–503, 1305 East-West Highway, SSMC4–Station 5544, Silver Spring, MD 20910; telephone: (301) 713–2631, fax: (301) 713–1960.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92–463; 5 U.S.C App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from October 25, 2002 to October 27, 2002, from 9 a.m. to 5 p.m. at the Air Line Pilots Association (ALPA), 535 Herndon Parkway, Herndon, VA 20172.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, as well as new aeronautical charting and air traffic control initiatives.

Attendance is open to the interested public, but will be limited to the space available.

The public must make arrangements by October 7, 2005, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by October 7, 2005. Public statements will only be considered if time permits.

Issued in Washington, DC, on August 23, 2005.

John A. Moore,

Co-Chair, Government/Industry, Aeronautical Charting Forum.

[FR Doc. 05–17211 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fourth Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

DATES: The meeting will be held September 13–16, 2005 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 I Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 203 meeting. The agenda will include:

- September 13:
  - Opening Special Session—Co-Chairman's Introductory Remarks
  - ''FAA Certification Process Review'' James Sizemore, FAA Certification Division, AIR–130
  - ''UAV Operations'' Thomas Bachman, AAI Corporation
  - ''Operating in Today's NAS—AOPA Ground School'' Randy Kenagy, AOPA
  - Sub-Group Writing Teams in working sessions
- September 14:
  - Opening Plenary Session (Welcome and Introductory Remarks, Approval of Third Plenary Summary, Review SC–203 Progress Since Third Plenary, New Business, Plenary Adjourns)
  - Sub-Group Writing Teams in working sessions
- September 15:
  - Sub-Group Writing Teams in working sessions
- September 16:
  - Sub-Group Writing Teams in working sessions
  - Closing Plenary Session (Writing Teams Report Out, Review Writing Team Actions Items, Other Business, Date and Place of Next Meeting, Review Plenary Action Items, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 22, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–17209 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket No. BTS–2005–22232]

Notice of Request for Clearance of a New Information Collection: National Ferry Database

AGENCY: Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for a new information collection related to the Nation's ferry operations. The information to be collected will be used to inventory existing ferry operations and to periodically update the report required by the Transportation Equity Act for the 21st Century (TEA–21) (P.L. 105–178), section 1207(c).

DATES: Comments must be submitted on or before October 31, 2005.

ADDRESSES: You can mail or hand-deliver comments to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. BTS–2005–22232, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Comments should identify the docket number; paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket BTS–2005–22232.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251.

If you wish to file comments using the Internet, you may use the DOT DMS Web site at *http://dms.dot.gov*. Please follow the online instructions for submitting an electronic comment. You can also review comments on-line at the DMS Web site at *http://dms.dot.gov*. The electronic docket is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19475–19570) or you may review the Privacy Act Statement at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. June Taylor Jones, (202) 366–4743

Passenger Travel Program Manager, BTS, RITA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Ferry Database.

Background: The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 ferry operators to identify: (1) Existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions and to develop information on those routes; and (4) potential for use of high speed ferry services and alternative-fueled ferry services. The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU; H.R. 3, Section 1801(e)) requires that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

The new data collection will rely on a written survey and telephone follow-up. An electronic version of the questionnaire will also be available to respondents on request. Data will be collected from the entire population of ferry operators (estimate 300 or less). Before the survey begins, the Passenger Vessel Association will mail letters to its respective members advising them of the purpose of the survey and encouraging their participation. The survey will request the respondents to provide information such as: (1) The points served; (2) the amount and source of Federal, State, and/or local funds used in the past 24 months; (3) the type of ownership; (4) the number of passengers and vehicles carried in the past 12 months; (5) any new routes expected to be added within the next five years; and (6) the highways that are connected by the ferries.

Respondents: The target population for the survey will be all of the approximately 300 operators of existing ferry services in the United States.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 20 minutes. This average is based on an estimate of 10 minutes to answer new questions and an additional 5–15 minutes to review (and revise as needed) previously submitted data.

Estimated Total Annual Burden: The total annual burden is estimated to be 100 hours (that is 20 minutes per respondent for 300 respondents equals 6,000 minutes or 100 hours).

Frequency: This survey will be updated every other year.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Authority: The Transportation Equity Act for the 21st Century, (Pub. L. 105–178), section 1207(c) and H.R. 3, The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) 2005 and 49 CFR 1.46.

Issued in Washington, DC on the 24th day of August, 2005.

Mary Hutzler,

Associate Director, Office of Statistical Programs, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 05–17212 Filed 8–29–05; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Sidley Austin Brown & Wood LLP on behalf Canadian Pacific Railway Company (WB471–9—August 8, 2005) for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17225 Filed 8–29–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Michael Behe representing USRail.desktop (WB604–3–7/8/05) for permission to use certain data from the Board's 1984–1998 and 2004 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17237 Filed 8–29–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34714]

Arkansas Midland Railroad Company, Inc.—Lease and Operation Exemption—Union Pacific Railroad Company

Arkansas Midland Railroad Company, Inc. (AKMD),[1] a Class III rail carrier, has

[1] AKMD is a wholly owned subsidiary of Pinsly Railroad Company, a noncarrier holding company which also controls four other Class III rail carriers in Florida and Massachusetts. *See Pinsly Railroad Company—Continuance in Control Exemption—Arkansas Midland Railroad Company Inc.,* Finance Docket No. 32001 (ICC served Mar. 6, 1992).

filed a verified notice of exemption under 49 CFR 1150.41, *et seq.*, to lease from Union Pacific Railroad Company (UP), and operate, UP's: (1) Cypress Bend Industrial Lead, between milepost 407.5 at McGehee, AR, and milepost 399.7 at Cypress Bend, AR; and (2) Potlatch Spur, between milepost 0.0 (milepost 399.7 on the Cypress Bend Industrial Lead), and approximately milepost 3.4 at the connection with the industrial trackage of Potlatch Corporation's Cypress Bend Mill, near Arkansas City, AR (Cypress Bend Line), a total distance of approximately 11.2 miles.

AKMD will also lease the yard at the east end of the Potlatch Spur and, except for yard tracks 001 and 002, the remainder of McGehee Yard that it does not already lease. Further, AKMD will obtain restated incidental bridge trackage rights over UP's rail line between milepost 406.5 at McGehee and milepost 415.26 at Dermott, AR, to allow the movement of through traffic between the Cypress Bend Line/McGehee Yard and the Warren Line (a UP line between Dermott, AR, that AKMD leased in 2004), a distance of approximately 8.76 miles.[2]

AKMD certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier. Because AKMD's projected annual revenues will exceed $5 million, AKMD has certified to the Board on June 9, 2005, that the required notice of the transaction was posted at the workplace of the employees on the affected line on June 3, 2005, and was sent to the national offices of the labor unions representing employees on the line. *See* 49 CFR 1150.42(e).

The transaction was scheduled to be consummated on or shortly after August 8, 2005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34714, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William C. Sippel, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

[2] AKMD indicates that it expects to execute an agreement shortly with UP to provide for AKMD's lease of the Cypress Bend Line.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: August 22, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17139 Filed 8–29–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 264X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Sumter County, SC

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 9.8-mile rail line between milepost SB–12.20 at Foxville and milepost SB–22.00 at Hasskamp, in Sumter County, SC.[1] The line traverses United States Postal Service Zip Codes 29150, 29153 and 29514.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and that overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 29, 2005,[2] unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), must be filed by September 9, 2005. Petitions to reopen must be filed by September 19, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: August 23, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–17136 Filed 8–29–05; 8:45 am]

BILLING CODE 4915–01–P

[1] On August 18, 2005, NSR informed the Board that milepost SB–22.20 stated in its notice, should be milepost 22.00.

[2] Because this is a discontinuance of service proceeding and not an abandonment, there is no need to provide an opportunity for trail use/rail banking or public use condition requests. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c)(6) and 1105.8.

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of the location of the September 8, 2005, public meeting of the President's Advisory Panel on Federal Tax Reform. This meeting was previously announced in 70 FR 49704 (August 24, 2005).

DATES: The meeting will be held on Thursday, September 8, 2005, in Washington, DC, and will begin at 9 a.m.

ADDRESSES: The meeting will be held at the Wardman Park Marriott Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

Dated: August 25, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–17302 Filed 8–29–05; 8:45 am]

BILLING CODE 4811–33–U

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of a public meeting of the President's Advisory Panel on Federal Tax Reform.

DATES: The meeting will be held on Thursday, September 15, 2005, and will begin at 10 a.m.

ADDRESSES: The meeting will be held at the Ronald Reagan Building & International Trade Center Amphitheater, Concourse Level, 1300 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The September 15 meeting is the twelfth meeting of the Advisory Panel. At this meeting, the Panel will continue to discuss issues associated with reform of the tax code.

Comments: Interested parties are invited to attend the meeting; however, no public comments will be heard at the meeting. Any written comments with respect to this meeting may be mailed to The President's Advisory Panel on Federal Tax Reform,1440 New York Avenue NW., Suite 2100, Washington, DC 20220. All written comments will be made available to the public.

Records: Records are being kept of Advisory Panel proceedings and will be available at the Internal Revenue Service's FOIA Reading Room at 1111 Constitution Avenue, NW., Room 1621, Washington, DC 20024. The Reading Room is open to the public from 9 a.m. to 4 p.m., Monday through Friday except holidays. The public entrance to the reading room is on Pennsylvania Avenue between 10th and 12th Streets. The phone number is (202) 622–5164 (not a toll-free number). Advisory Panel documents, including meeting announcements, agendas, and minutes, will also be available on *http://www.taxreformpanel.gov.*

Dated: August 25, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–17303 Filed 8–29–05; 8:45 am]

BILLING CODE 4811–33–U

Federal Register

Tuesday,
August 30, 2005

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Parts 523, 533, and 537

49 CFR Part 533

Light Trucks, Average Fuel Economy; Model Years 2008–2011; Proposed Rules

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 533 and 537

[Docket No. 2005–22223]

RIN 2127–AJ61

Average Fuel Economy Standards for Light Trucks; Model Years 2008–2011

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to reform the structure of the corporate average fuel economy (CAFE) program for light trucks and proposes to establish higher CAFE standards for model year (MY) 2008–2011 light trucks. Reforming the CAFE program would enable it to achieve larger fuel savings while enhancing safety and preventing adverse economic consequences.

During a transition period of MYs 2008–2010, manufacturers may comply with CAFE standards established under the reformed structure (Reformed CAFE) or with standards established in the traditional way (Unreformed CAFE). This will permit manufacturers to gain experience with the Reformed CAFE standards. In MY 2011, all manufacturers would be required to comply with a Reformed CAFE standard.

The reform is based on vehicle size. Under Reformed CAFE, fuel economy standards are restructured so that they are based on a measure of vehicle size called ''footprint,'' the product of multiplying a vehicle's wheelbase by its track width. Vehicles would be divided into footprint categories, each representing a different range of footprint. A target level of average fuel economy is proposed for each footprint category, with smaller footprint light trucks expected to achieve more fuel economy and larger ones, less. Each manufacturer would still be required to comply with a single overall average fuel economy level for each model year of production. A particular manufacturer's compliance obligation for a model year is calculated as the harmonic average of the fuel economy targets in each size category, weighted by the distribution of manufacturer's production volumes across the size categories.

The proposed Unreformed CAFE standards are: 22.5 miles per gallon (mpg) for MY 2008, 23.1 mpg for MY 2009, and 23.5 mpg for MY 2010. The Reformed CAFE standards for those model years would be set at levels intended to ensure that the industry-wide costs of the Reformed standards are roughly equivalent to the industry-wide costs of the Unreformed CAFE standards in those model years. For MY 2011, the Reformed CAFE standard would be set at the level that maximizes net benefits, accounting for unquantified benefits and costs. We believe that all of the proposed standards would be set at the maximum feasible level, while accounting for technological feasibility, economic practicability and other relevant factors.

Since a manufacturer's compliance obligation for a model year under Reformed CAFE depends in part on its actual production in that model year, the obligation cannot be calculated with absolute precision until the final production figures for that model year become known. However, a manufacturer could calculate its obligation with a reasonably high degree of accuracy in advance of that model year, based on its product plans for the year. Prior to and during the model year, the manufacturer would be able to track all of the key variables in the formula used for calculating the obligation (*e.g.*, distribution of production among the categories and vehicle fuel economy). This notice publishes estimates of the compliance obligations, by manufacturer, for MYs 2008–2011 under Reformed CAFE, using the fuel economy targets proposed by NHTSA and the product plans submitted to NHTSA by the manufacturers in response to a request for product plans published in December 2003.

This rulemaking is mandated by the Energy Policy and Conservation Act (EPCA), which was enacted in the aftermath of the energy crisis created by the oil embargo of 1973–74. The concerns about energy security and the effects of energy prices and supply on national economic well-being that led to the enactment of EPCA remain alive today. Sustained growth in the demand for oil worldwide, coupled with tight crude oil supplies, is the driving force behind the sharp price increases seen over the past several years. Increasingly, the oil consumed in the U.S. originates in countries with political and economic situations that raise concerns about future oil supply and prices.

We recognize that financial difficulties currently exist in the motor vehicle industry and that a substantial number of job losses have been announced recently at large full-line manufacturers. Accordingly, we have carefully balanced the cost of the rule with the benefits of conservation. We believe that, compared to Unreformed CAFE, Reformed CAFE would enhance overall fuel savings while providing vehicle makers the flexibility they need to respond to changing market conditions. Reformed CAFE would also provide a more equitable regulatory framework by creating a level-playing field for manufacturers, regardless of whether they are full-line or limited-line manufacturers. We are particularly encouraged that Reformed CAFE would reduce the adverse safety risks generated by the Unreformed CAFE program. The transition from the Unreformed to the Reformed system would begin soon, but ample lead time is provided before Reformed CAFE takes full effect in MY 2011.

We recognize also that our proposals were derived from analyses of information from a variety of sources, including the product plans submitted by the manufacturers in early 2004. We fully anticipate that the manufacturers will respond to this proposal by providing revised plans that reflect events since then. We will evaluate the revised plans, the public comments, and other information and analysis in selecting the most appropriate standards for MYs 2008–2011.

DATES: Comments must be received on or before November 22, 2005. We have provided more than the normal 60-day comment period because of the complexity of this rulemaking. However, because of that complexity, the necessity for ensuring sufficient time for careful analysis of the public comments and other available information, and for meeting the April 1, 2006 statutory deadline for issuing a final rule on the CAFE standard for MY 2008, extensions of the comment due date will not be possible. To ensure the agency's consideration of their comments, the public should submit them to the agency not later than the comment due date.

ADDRESSES: You may submit comments 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 20590–001.
- 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.

• Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical issues, call Ken Katz, Lead Engineer, Fuel Economy Division, Office of International Policy, Fuel Economy, and Consumer Programs, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov.* For legal issues, call Stephen Wood or Christopher Calamita of the Office of the Chief Counsel, at (202) 366–2992, or e-mail them at *swood@nhtsa.dot.gov* or *ccalamita@nhtsa.dot.gov.*

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I. Executive Summary

A. Our Proposal

This proposal is part of a continuing effort by the Department of Transportation to reform the structure of the CAFE regulatory program so that it achieves higher fuel savings while enhancing safety and preventing adverse economic consequences. We have previously set forth our concerns about the way in which the current CAFE program operates and sought comment on approaches to reforming the CAFE program. We have also previously increased light truck CAFE standards, from the ''frozen'' level of 20.7 mpg applicable from MY 1996 through MY 2004, to a level of 22.2 mpg applicable to MY 2007. In adopting those increased standards, we noted that we were limited in our ability to make further increases without reforming the program.

This notice proposes to reform the structure of the CAFE program for light trucks based on vehicle size and proposes to establish higher CAFE standards for MY 2008–2011 light trucks. Reforming the CAFE program would enable it to achieve larger fuel savings while enhancing safety and preventing adverse economic consequences.

During a transition period of MYs 2008–2010, manufacturers may comply with CAFE standards established under the reformed structure (Reformed CAFE) or with standards established in the traditional way (Unreformed CAFE). This will permit manufacturers to gain experience with the Reformed CAFE standards. The Reformed CAFE standards for those model years would

be set at levels intended to ensure that the industry-wide cost of those standards are roughly equivalent to the industry-wide cost of the Unreformed CAFE standards for those model years. The additional leadtime provided by the transition period would aid, for example, those manufacturers that would, for the first time, face a binding CAFE constraint and be required to make fuel economy improvements beyond those that they planned on their own to make.

In MY 2011, all manufacturers would be required to comply with a Reformed CAFE standard. The Reformed CAFE standard for that model year would be set at the level that maximizes net benefits.

The Unreformed standards for MYs 2008–2010 are set with particular regard to the capabilities of and impacts on the ''least capable'' full line manufacturer (*i.e.*, one that produces a wide variety of types and sizes of vehicles) with a significant share of the market. A single CAFE level, applicable to each manufacturer, is established for each model year.

The Unreformed CAFE standards for MYs 2008–2010 would be:

MY 2008: 22.5 mpg

MY 2009: 23.1 mpg

MY 2010: 23.5 mpg

We estimate that these standards could save 5.4 billion gallons of fuel over the lifetime of the vehicles sold during those model years, compared to the savings that would occur if the standards remained at the MY 2007 level of 22.2 mpg.

The Reformed CAFE approach to establishing light truck CAFE standards has the potential of providing even greater fuel savings. Under Reformed CAFE, each manufacturer's required level of CAFE would be based on target levels of average fuel economy set for vehicles of various size categories. The categories would be defined by vehicle ''footprint''—the product of the average track width (the distance between the centerline of the tires on the same axle) and wheelbase (basically, the distance between the centers of the axles). The target values would reflect the technological and economic capabilities of the industry within each of the footprint categories. The target for a given size category would be the same for all manufacturers, regardless of differences in their overall fleet mix. Compliance would be determined by comparing a manufacturer's harmonically averaged fleet fuel economy in a model year with a required fuel economy level calculated using the manufacturer's actual production levels and the category targets.

The range of targets for each model year would be as follows:

MY 2008: From 26.8 mpg for the smallest vehicles to 20.4 mpg for the largest;

MY 2009: From 27.4 mpg for the smallest vehicles to 21.0 mpg for the largest;

MY 2010: From 27.8 mpg for the smallest vehicles to 20.8 mpg for the largest;

MY 2011: From 28.4 mpg for the smallest vehicles to 21.3 mpg for the largest.

The standards based on these targets would save approximately 10.0 billion gallons of fuel over the lifetime of the vehicles sold during those four model years, compared to the savings that would occur if the standards remained at the MY 2007 level of 22.2 mpg. The Reformed standards for MYs 2008–2010 would save 650 million more gallons of fuel than the Unreformed standards for those years. As noted above, the Reformed standard for MY 2011 would be the first Reformed standard set at the level that maximizes net benefits. It would save an additional 4.1 billion gallons of fuel.

If all manufacturers complied with the Reformed CAFE standards, the total costs would be approximately $6.2 billion for MYs 2008–2011, compared to the costs they would incur if the standards remained at the MY 2007 level of 22.2 mpg. The resulting vehicle price increases to buyers of MY 2008 light trucks would be paid back[1] in additional fuel savings in an average of 37 months and to buyers of MY 2011 light trucks in an average of 47 months, assuming fuel prices ranging from $1.51 to $1.58 per gallon.[2] We estimate that the total benefits under the Unreformed CAFE standards for MYs 2008–2010 plus the Reformed CAFE standard for MY 2011 would be approximately $7.0 billion, and under the Reformed CAFE standards for MYs 2008–2011 would be approximately $7.5 billion.

We have tentatively determined that the proposed standards under both Unreformed CAFE and Reformed CAFE represent the maximum feasible fuel economy level for each system. In reaching this conclusion, we have balanced the express statutory factors and other relevant considerations, such as safety concerns, effects on employment and the need for flexibility to transition to a Reformed CAFE program that can achieve greater fuel savings in a more economically efficient way.

The Reformed CAFE approach incorporates several important elements of reform suggested by the National Academy of Sciences in its 2002 report (Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards). The agency believes that the Reformed CAFE approach has four basic advantages over the Unreformed CAFE approach.

First, Reformed CAFE will enlarge energy savings. The energy-saving potential of Unreformed CAFE is limited because only a few full-line manufacturers are required to make improvements. In effect, the capabilities of these full-line manufacturers, whose offerings include larger and heavier light trucks, constrain the stringency of the uniform, industry-wide standard. As a result, the Unreformed CAFE standard is generally set below the capabilities of limited-line manufacturers, who sell predominantly lighter and smaller light trucks. Under Reformed CAFE, which accounts for size differences in product mix, virtually all light-truck manufacturers would be required to improve the fuel economy of their vehicles. Thus, Reformed CAFE will continue to require full-line manufacturers to improve the overall fuel economy of their fleets, while also

[1] The payback period represents the length of time required for a vehicle buyer to recoup the higher cost of purchasing a more fuel-efficient vehicle through savings in fuel use. When a more stringent CAFE standard requires a manufacturer to improve the fuel economy of some of its vehicle models, the manufacturer's added costs for doing so are reflected in higher prices for these models. While buyers of these models pay higher prices to purchase these vehicles, their improved fuel economy lowers their owners' costs for purchasing fuel to operate them. Over time, buyers thus recoup the higher purchase prices they pay for these vehicles in the form of savings in outlays for fuel. The length of time required to repay the higher cost of buying a more fuel-efficient vehicle is referred to as the buyer's ''payback period.''

The length of this payback period depends on the initial increase in a vehicle's purchase price, the improvement in its fuel economy, the number of miles it is driven each year, and the retail price of fuel. We calculated payback periods using the fuel economy improvement and average price increase for each manufacturer's vehicles estimated to result from the proposed standard, the U.S. Energy Information Administration's forecast of future retail gasoline prices, and estimates of the number of miles light trucks are driven each year as they age developed from U.S. Department of Transportation data. Energy Information Administration, Annual Energy Outlook 2005 (AEO 2005), Table 100, *http://www.eia.doe.gov/oiaf/aeo/supplement/index.html*; and U.S. Department of Transportation, 2001 National Household Travel Survey, *http://nhts.ornl.gov/2001/index.shtml*. Under these assumptions, payback periods ranged from as short as 22 months to as long as 48 months, averaging 35 months for the seven largest manufacturers of light trucks.

[2] The fuel prices used to calculate the length of the payback periods are those expected over the life of the MY 2008–2011 light trucks, not the current fuel prices. Those future fuel prices were obtained from the AEO 2005.

requiring limited-line manufacturers to enhance the fuel economy of the vehicles they sell.

Second, Reformed CAFE will offer enhanced safety. The vehicle manufacturers constrained by Unreformed CAFE standards are encouraged to pursue the following compliance strategies that entail safety risks: downsizing of vehicles, design of some vehicles to permit classification as ''light trucks'' for CAFE purposes, and offering smaller and lighter vehicles to offset sales of larger and heavier vehicles. The adverse safety effects of downsizing and downweighting have already been documented in the CAFE program for passenger cars. When a manufacturer designs a vehicle to permit its classification as a light truck, it may increase the vehicle's propensity to roll over.

Reformed CAFE is designed to lessen each of these safety risks. Downsizing of vehicles is discouraged under Reformed CAFE since smaller vehicles are expected to achieve greater fuel economy. Moreover, Reformed CAFE lessens the incentive to design smaller vehicles to achieve a ''light truck'' classification, since small light trucks would be regulated at roughly the same degree of stringency as passenger cars.

Third, Reformed CAFE provides a more equitable regulatory framework for different vehicle manufacturers. Under Unreformed CAFE, the cost burdens and compliance difficulties have been imposed primarily on the full-line manufacturers who have large sales volumes at the larger and heavier end of the light-truck fleet. Reformed CAFE spreads the regulatory cost burden for fuel economy more broadly across vehicle manufacturers within the industry.

Fourth, Reformed CAFE is more market-oriented because it more fully respects economic conditions and consumer choice. Reformed CAFE does not force vehicle manufacturers to adjust fleet mix toward smaller vehicles unless that is what consumers are demanding. As the industry's sales volume and mix changes in response to economic conditions (*e.g.*, gasoline prices and household income) and consumer preferences (*e.g.*, desire for seating capacity or hauling capability), the level of CAFE required of manufacturers under Reformed CAFE will, at least partially, adjust automatically to these changes. Accordingly, Reformed CAFE may reduce the need for the agency to revisit previously established standards in light of changed market conditions, a difficult process that undermines regulatory certainty for the industry. In the mid-1980's, for example, the agency relaxed several Unreformed CAFE standards because fuel prices fell more than had been expected when those standards were established and, as a result, consumer demand for small vehicles with high fuel economy did not materialize as expected. By moving to a more market-oriented system, the agency may also be able to pursue more multi-year rulemakings that span larger time frames than the agency has attempted in the past.

The agency is also issuing, along with this notice, a notice requesting updated product plan information and other data to assist in developing a final rule. We recognize that the manufacturer product plans relied upon in developing this proposal—those plans received in early 2004 in response to a 2003 request for information—may already be outdated in some respects. We fully expect that manufacturers have revised those plans to reflect subsequent developments.

We solicit comment on all aspects of this proposal. In particular, we solicit comment on (1) whether the proposed levels of maximum feasible CAFE reflect an appropriate balancing of the explicit statutory factors and other relevant factors, (2) whether CAFE reform should be designed based on size categories or as a continuous function, (3) whether the reform should be based on a single size attribute or whether adjustments should also be made for attributes such as towing capability and cargo hauling capability, and (4) whether the three-year transition period is necessary or whether it can be reduced to achieve a more rapid transition to the Reformed CAFE system. Other specific areas where we request comments are identified elsewhere in this preamble and in the Preliminary Regulatory Impact Analysis (PRIA). Based on public comments and other information, including new data and analysis, and updated product plans, the standards adopted in the final rule could well be different.

B. Energy demand and supply and the value of conservation

Many of the concerns about energy security and the effects of energy prices and supply on national economic well-being that led to the enactment of EPCA in 1975 persist today.[3] The demand for oil is steadily growing in the U.S. and around the world. By 2025, U.S. demand for oil is expected to increase 40 percent and world oil demand is expected to increase by nearly 60 percent. Most of these increases would occur in the transportation sector. To meet this projected increase in world demand, worldwide productive capacity would have to increase by more than 44 million barrels per day over current levels. OPEC producers are expected to supply nearly 60 percent of the increased production. By 2025, nearly 70 percent of the oil consumed in the U.S. would be imported oil. Strong growth in the demand for oil worldwide, coupled with tight crude oil supplies, is the driving force behind the sharp price increases seen over the past four years. Increasingly, the oil consumed in the U.S. originates in countries with political and economic situations that raise concerns about future oil supply and prices.

Energy is an essential input to the U.S. economy and having a strong economy is essential to maintaining and strengthening our national security. Conserving energy, especially reducing the nation's dependence on petroleum, benefits the U.S. in several ways. Reducing total petroleum use decreases our economy's vulnerability to oil price shocks. Reducing dependence on oil imports from regions with uncertain conditions enhances our energy security and can reduce the flow of oil profits to certain states now hostile to the U.S. Reducing the growth rate of oil use will help relieve pressures on already strained domestic refinery capacity, decreasing the likelihood of future product price volatility.

II. Background

A. 1974 DOT/EPA report to Congress on potential for motor vehicle fuel economy improvements

In 1974, the Department of Transportation (DOT) and Environmental Protection Agency (EPA) submitted to Congress a report entitled ''Potential for Motor Vehicle Fuel Economy Improvement'' (1974 Report).[4] This report was prepared in compliance with Section 10 of the Energy Supply and Environmental Coordination Act of 1974, Public Law 93–319 (the Act). The Act directed EPA and DOT to report on the practicability of a production-weighted fuel economy improvement standard of 20 percent for new motor vehicles in the 1980 time frame. As required by Section 10 of the Act, the report included an assessment of the technological challenges of meeting any such standard, including lead times involved, the test procedures required to determine compliance, the economic

[3] The sources of the figures in this section can be found below in section VIII, ''Need for Nation to conserve energy.''

[4] The 1974 report is available in the docket for this rulemaking.

costs and benefits, the enforcement means, the effect on energy and other resources, and the relationship of safety and emission standards to CAFE.

In the 1974 Report, DOT/EPA said that performance standards regulating fuel economy could take either of two modes: A production-weighted average standard for each manufacturer's entire fleet of vehicles or a fuel economy standard tailored to individual classes of vehicles. They identified three forms that a production-weighted standard could take:

- A common standard (*e.g.*, 16.8 mpg for all manufacturers);
- A standard stated as a uniform per cent improvement (*e.g.*, 20% improvement for each manufacturer); or
- A variable standard based on the costs or potential to improve for each manufacturer.

(1974 Report, p. 77)

As to standards for individual classes, they identified two different forms:

- A standard stated as uniform quantity of improvement (*e.g.*, 2.8 mpg for all classes); or
- A variable standard based on the potential to improve each class.

(1974 Report, p. 77–78)

DOT/EPA concluded in the 1974 Report that a production-weighted standard establishing one uniform specific fuel economy average for all manufacturers would, if sufficiently stringent to have the needed effect, impact most heavily on manufacturers who have lower fuel economy, while not requiring manufacturers of current vehicles with better fuel economy to maintain or improve their performance. (1974 Report, p. 12) Production-weighted standards specifically tailored to each manufacturer would eliminate some inequities, but were considered to be difficult to administer fairly. (Ibid.)

B. Energy Policy and Conservation Act of 1975

Congress enacted the Energy Policy and Conservation Act (EPCA Pub. L. 94–163) during the aftermath of the energy crisis created by the oil embargo of 1973–74. The Act established an automobile fuel economy regulatory program by adding Title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Savings Act. Title V has been amended from time to time and codified without substantive change as Chapter 329 of title 49, United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and separate standards for automobiles that are not passenger automobiles (light trucks).

For the purposes of the CAFE statute, ''automobiles'' include any ''4-wheeled vehicle that is propelled by fuel (or by alternative fuel) manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at not more than 6,000 pounds gross vehicle weight.'' They also include any such vehicle rated at between 6,000 and 10,000 pounds gross vehicle weight (GVWR) if the Secretary decides by regulation that an average fuel economy standard for the vehicle is feasible, and that either such a standard will result in significant energy conservation or the vehicle is substantially used for the same purposes as a vehicle rated at not more than 6000 pounds GVWR.

In 1978, NHTSA published a final rule in which we determined that standards for vehicles rated between 6000 and 8500 pounds GVWR are feasible, that such standards will result in significant energy conservation on a per-vehicle basis and that those vehicles are used for substantially the same purposes as vehicles rated at not more than 6000 pounds GVWR (March 23, 1978; 43 FR 11995, at 11997). Vehicles rated at between 6000 and 8500 pounds GVWR first became subject to the CAFE standards in MY 1980.

The CAFE standards set a minimum performance requirement in terms of an average number of miles a vehicle travels per gallon of gasoline or diesel fuel. Individual vehicles and models are not required to meet the mileage standard. Instead, each manufacturer must achieve a harmonically averaged level of fuel economy for all specified vehicles manufactured by a manufacturer in a given MY. The statute distinguishes between ''passenger automobiles'' and ''non-passenger automobiles.'' We generally refer to non-passenger automobiles as light trucks.

In enacting EPCA, Congress made a clear and specific choice about the structure of the average fuel economy standard for passenger cars. After considering the variety of approaches presented in the 1974 Report, Congress established a common statutory CAFE standard applicable to each manufacturer's fleet of passenger automobiles. The Secretary of Transportation has the authority to change the standard if it no longer represents the ''maximum feasible'' standard consistent with the criteria set forth in the statute. Pursuant to that authority, the Secretary amended the passenger car standard with regard to MYs 1986–1989 to address situations in which, despite manufacturers' good faith compliance plans, market conditions rendered the statutory standard impracticable and infeasible. Since 1990, the CAFE standard for passenger automobiles has been 27.5 mpg and compliance is determined in accordance with detailed procedures set forth in Section 32904(a) and (b).

Congress was considerably less decided and prescriptive with respect to what sort of standards and procedures should be established for light trucks. It neither made a clear choice among the approaches (or among the forms of those approaches) identified in the 1974 Report nor precluded the selection of any of those approaches or forms. Further, it did not establish by statute a CAFE standard for light trucks. Instead, Congress provided the Secretary with a choice of establishing a form of a production-weighted average standard for each manufacturer's entire fleet of light trucks, as suggested in the 1974 Report, or a form of production-weighted standards for classes of light trucks. Congress directed the Secretary to establish maximum feasible CAFE standards applicable to each manufacturer's light truck fleet, or alternatively, to classes of light trucks, and to establish them at least 18 months prior to the start of each model year. When determining a ''maximum feasible level of fuel economy,'' the Secretary is directed to balance factors including the nation's need to conserve energy, technological feasibility, economic practicability and the impact of other motor vehicle standards on fuel economy.

Manufacturers are required to provide a series of fuel economy reports to both the EPA and NHTSA. NHTSA requires manufacturers to provide pre-model year and mid-model year reports. See 49 CFR part 537. The reports to NHTSA must include, in part, vehicle model fuel economy values as calculated under the EPA regulations, projected sales volumes, and actual sales volumes as available. A manufacturer must supply similar information to the EPA at the end of a model year, along with actual production volumes so that its fleet wide average fuel economy can be calculated. The EPA then certifies these reports and submits them to NHTSA so that we may determine a manufacturer's compliance with the CAFE standards.

C. 1979–2002 light truck standards

NHTSA established the first light truck CAFE standards for MY 1979 and applied them to light trucks with a GVWR up to 6,000 pounds (March 14, 1977; 42 FR 13807). Beginning with MY 1980, NHTSA raised this GVWR ceiling to 8,500 pounds. For MYs 1979–1981, the agency established separate standards for two-wheel drive (2WD)

and four-wheel drive (4WD) light trucks without a ''combined'' standard reflecting the combined capabilities of 2WD and 4WD light trucks. Manufacturers that produced both 2WD vehicles and 4WD vehicles could, however, decide to treat them as a single fleet and comply with the 2WD standard.

Beginning with MY 1982, NHTSA established a combined standard reflecting the combined capabilities of 2WD and 4WD light trucks, plus optional 2WD and 4WD standards. After MY 1991, NHTSA dropped the optional 2WD and 4WD standards. During MYs 1980–1995, NHTSA also separated the ''captive imports'' [5] of U.S. light truck manufacturers from their other truck models in determining compliance with CAFE standards.

Since the agency sets standards at the maximum feasible level of average fuel economy, as required by EPCA, and since the agency's determinations about the maximum feasible level of average fuel economy in future model years are highly dependent on projections about the state of technology and market conditions in those years, NHTSA twice found it necessary to reduce a light truck standard when it received new information relating to the agency's past projections. In 1979, the agency reduced the MY 1981 2WD standard after Chrysler demonstrated that there were smaller than expected fuel economy benefits from various technological improvements and larger than expected adverse impacts from other federal vehicle standards and test procedures (December 31 1979; 44 FR 77199).

In 1984, the agency reduced the MY 1985 light truck standards to the following levels: Combined standard-19.5 mpg, 2WD standard-19.7 mpg and 4WD standard-18.9 mpg (October 22, 1984; 49 FR 41250). The agency concluded that market demand for light truck performance, as reflected in engine mix and axle ratio usage, had not materialized as anticipated when the agency initially established the MY 1985 standards. The agency said that this resulted from lower than anticipated fuel prices. The agency concluded that the only actions then available to manufacturers to improve their fuel economy levels for MY 1986 would have involved product restrictions likely resulting in significant adverse economic impacts. The reduction of the MY 1985 standard was upheld by the U.S. Circuit Court of Appeals for the District of Columbia. *Center for Auto Safety* v. *NHTSA*, 793 F.2d 1322 (D.C. Cir. 1986) (rejecting the contention that the agency gave impermissible weight to the effects of shifts in consumer demand toward larger, less fuel-efficient trucks on the fuel economy levels manufacturers could achieve).[6]

In 1994, the agency departed from its usual past practice of considering light truck standards for one or two model years at a time and published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** outlining NHTSA's intention to set standards for some, or all, of MYs 1998–2006 (59 FR 16324; April 6, 1994).

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provided:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Pursuant to that Act, we then issued a final rule limited to MY 1998, setting the light truck CAFE standard for that year at 20.7 mpg, the same level as the standard we had set for MY 1997 (61 FR 14680; April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for FY 1997 was enacted (Pub. L. 104–205). Section 323 of that Act included the same limitation on appropriations regarding the CAFE standards contained in Section 330 of the FY 1996 Appropriations Act. The agency followed the same process as the prior year and established a MY 1999 light truck CAFE standard of 20.7 mpg, the same level as the standard that had been set for MYs 1997 and 1998. Because the same limitation on the setting of CAFE standards was included in the Appropriations Acts for each of FYs 1998–2001, the agency followed that same procedure during those fiscal years.

While the Department of Transportation and Related Agencies Appropriations Act for FY 2001 (Pub. L. 106–346) contained a restriction on CAFE rulemaking identical to that contained in prior appropriation acts, the conference committee report for that Act directed NHTSA to fund a study by the NAS to evaluate the effectiveness and impacts of CAFE standards (H. Rep. No. 106–940, at p. 117–118).

In a letter dated July 10, 2001, following the release of the President's National Energy Policy, Secretary of Transportation Mineta asked the House and Senate Appropriations Committees to lift the restriction on the agency spending funds for the purposes of improving CAFE standards. The Department of Transportation and Related Agencies Appropriations Act for FY 2002 (Pub. L. 107–87), which was enacted on December 18, 2001, did not contain a provision restricting the Secretary's authority to prescribe fuel economy standards.

D. 2001 National Energy Policy

The National Energy Policy,[7] released in May 2001, stated that ''(a) fundamental imbalance between supply and demand defines our nation's energy crisis'' and that ''(t)his imbalance, if allowed to continue, will inevitably undermine our economy, our standard of living, and our national security.'' The National Energy Policy was designed to promote dependable, affordable and environmentally sound energy for the future. The Policy envisions a comprehensive long-term strategy that uses leading edge technology to produce an integrated energy, environmental and economic policy. It set forth five specific national goals: ''modernize conservation, modernize our energy infrastructure, increase energy supplies, accelerate the protection and improvement of the environment, and increase our nation's energy security.''

The National Energy Policy included recommendations regarding the path that the Administration's energy policy should take and included specific recommendations regarding vehicle fuel economy and CAFE. It recommended that the President direct the Secretary of Transportation to—

—Review and provide recommendations on establishing CAFE standards with due consideration of the National Academy of Sciences study released (in prepublication

[5] ''Captive import'' means, with respect to a light truck, one which is not domestically manufactured but which is imported by a manufacturer whose principal place of business is the United States. 49 CFR 533.4(b)(2).

[6] NHTSA similarly found it necessary on occasion to reduce the passenger car CAFE standards in response to new information. The agency reduced the MY 1986 passenger car standard because a continuing decline in gasoline prices prevented a projected shift in consumer demand toward smaller cars and smaller engines and because the only actions available to manufacturers to improve their fuel economy levels for MY 1986 would have involved product restrictions likely resulting in significant adverse economic impacts. (October 4, 1985; 40 FR 40528) This action was upheld in *Public Citizen* vs. *NHTSA*, 848 F.2d 256 (D.C. Cir. 1988). NHTSA also reduced the MY 1987–88 passenger car standards (October 6, 1986; 51 FR 35594) and MY 1989 passenger car standard (October 6, 1988; 53 FR 39275) for similar reasons.

[7] *http://www.whitehouse.gov/energy/National-Energy-Policy.pdf*

form) in July 2001. Responsibly crafted CAFE standards should increase efficiency without negatively impacting the U.S. automotive industry. The determination of future fuel economy standards must therefore be addressed analytically and based on sound science.
—Consider passenger safety, economic concerns, and disparate impact on the U.S. versus foreign fleet of automobiles.
—Look at other market-based approaches to increasing the national average fuel economy of new motor vehicles.

E. 2002 NAS Study of CAFE Reform

In response to direction from Congress, NAS published a lengthy report in 2002 entitled ''Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards.'' [8]

The report concludes that the CAFE program has clearly contributed to increased fuel economy and that it was appropriate to consider further increases in CAFE standards. (NAS, p. 3 (Finding 1)) It cited not only the value of fuel savings, but also adverse consequences (*i.e.*, externalities) associated with high levels of petroleum importation and use that are not reflected in the price of petroleum (*e.g.*, the adverse impact on energy security). The report further concluded that technologies exist that could significantly reduce fuel consumption by passenger cars and light truck fuels within 15 years, while maintaining vehicle size, weight, utility and performance. (NAS, p. 3 (Finding 5)) Light duty trucks were said to offer the greatest potential for reducing fuel consumption. (NAS, p. 4 (Finding 5)) The report also noted that vehicle development cycles—as well as future economic, regulatory, safety and consumer preferences—would influence the extent to which these technologies could lead to increased fuel economy in the U.S. market. To assess the economic trade-offs associated with the introduction of existing and emerging technologies to improve fuel economy, the NAS conducted what it called a ''cost-efficient analysis''—''that is, the committee [that authored the report] identified packages of existing and emerging technologies that could be introduced over the next 10 to 15 years that would improve fuel economy up to the point where further increases in fuel economy would not be reimbursed by fuel savings.'' (NAS, p. 4 (Finding 6))

Recognizing the many trade-offs that must be considered in setting fuel economy standards, the report took no position on what CAFE standards would be appropriate for future years. It noted, ''(s)election of fuel economy targets will require uncertain and difficult trade-offs among environmental benefits, vehicle safety, cost, oil import dependence, and consumer preferences.''

The report found that, to minimize financial impacts on manufacturers, and on their suppliers, employees, and consumers, sufficient lead-time (consistent with normal product life cycles) should be given when considering increases in CAFE standards. The report stated that there are advanced technologies that could be employed, without negatively affecting the automobile industry, if sufficient lead-time were provided to the manufacturers.

The report expressed concerns about increasing the standards under the CAFE program as currently structured. While raising CAFE standards under the existing structure would reduce fuel consumption, doing so under alternative structures ''could accomplish the same end at lower cost, provide more flexibility to manufacturers, or address inequities arising from the present'' structure. (NAS, pp. 4–5 (Finding 10)) [9] Further, almost all of the committee that authored the report, including the committee's safety specialists, said, ''to the extent that the size and weight of the fleet have been constrained by CAFE requirements * * * those requirements have caused more injuries and fatalities on the road than would otherwise have occurred.'' (NAS, p. 29) Specifically, they noted: ''the downweighting and downsizing that occurred in the late 1970s and early 1980s, some of which was due to CAFE standards, probably resulted in an additional 1300 to 2600 traffic fatalities in 1993.'' (NAS, p. 3 (Finding 2))

To address those structural problems, the report suggested various possible reforms.[10] The report found that the ''CAFE program might be improved significantly by converting it to a system in which fuel targets depend on vehicle attributes.'' (NAS, p. 5 (Finding 12)) The report noted

One such system would make the fuel economy target dependent on vehicle weight, with lower fuel consumption targets set for lighter vehicles and higher targets for heavier vehicles, up to some maximum weight, above which the target would be weight-independent. Such a system would create incentives to reduce the variance in vehicle weights between large and small vehicles, thus providing for overall vehicle safety. It has the potential to increase fuel economy with fewer negative effects on both safety and consumer choice. Above the maximum weight, vehicles would need additional advanced fuel economy technology to meet the targets. The committee believes that although such a change is promising, it requires more investigation than was possible in this study.

(NAS, p. 5 (Finding 12))

The report noted further that under an attribute-based approach, the required CAFE levels could vary among the manufacturers based on the distribution of their product mix:

Attribute-Based Fuel Economy Targets

The government could change the way that fuel economy targets for individual vehicles are assigned. The current CAFE system sets one target for all passenger cars (27.5 mpg) and one target for all light-duty trucks (20.7 mpg). Each manufacturer must meet a sales-weighted average (more precisely, a harmonic mean * * *) of these targets. However, targets could vary among passenger cars and among trucks, based on some attribute of these vehicles such as weight, size, or load-carrying capacity. In that case a particular manufacturer's average target for passenger cars or for trucks would depend upon the fractions of vehicles it sold with particular levels of these attributes. For example, if weight were the criterion, a manufacturer that sells mostly light vehicles would have to achieve higher average fuel economy than would a manufacturer that sells mostly heavy vehicles.

(NAS, p. 87)

Based on these findings, the report recommended

Consideration should be given to designing and evaluating an approach with fuel economy targets that are dependent on

[8] The NAS submitted its preliminary report to the Department of Transportation in July 2001 and released its final report in January 2002.

[9] The report noted the following about the concept of equity:

Potential Inequities

The issue of equity or inequity is subjective. However, one concept of equity among manufacturers requires equal treatment of equivalent vehicles made by different manufacturers. The current CAFE standards fail this test. If one manufacturer was positioned in the market selling many large passenger cars and thereby was just meeting the CAFE standard, adding a 22-mpg car (below the 27.5-mpg standard) would result in a financial penalty or would require significant improvements in fuel economy for the remainder of the passenger cars. But, if another manufacturer was selling many small cars and was significantly exceeding the CAFE standard, adding a 22-mpg vehicle would have no negative consequences.

(NAS, p. 102).

[10] In assessing and comparing possible reforms, the report urged consideration of the following factors:

Fuel use responses encouraged by the policy,
Effectiveness in reducing fuel use,
Minimizing costs of fuel use reduction,
Other potential consequences
—Distributional impacts
—Safety
—Consumer satisfaction
—Mobility
—Environment
—Potential inequities, and
Administrative feasibility.
(NAS, p. 94).

vehicle attributes, such as vehicle weight, that inherently influence fuel use. Any such system should be designed to have minimal adverse safety consequences.

(NAS, p. 6, (Recommendation 3))

In February 2002, Secretary Mineta asked Congress ''to provide the Department of Transportation with the necessary authority to reform the CAFE program, guided by the NAS report's suggestions.''

F. 2002 Request for Comments on NAS Study

On February 7, 2002, we issued a Request for Comments (RFC) (67 FR 5767; Docket No. 2002–11419) seeking data on which we could base an analysis of manufacturer capability for the purpose of determining the appropriate CAFE standards to set for light trucks for upcoming model years, beginning with MY 2005. We also sought comments on possible reforms to the CAFE program, as it applies to both passenger cars and light trucks, to protect passenger safety, advance fuel-efficient technologies, and obtain the benefits of market-based approaches.

While we have considered the comments, the original RFC was quite general and the comments received tended to focus on concerns with the current program or the generic admonishment against CAFE reform—and not on specific potential options. A more detailed summary of comments can be found in the advanced notice of proposed rulemaking (2003 ANPRM) published on December 29, 2003 (68 FR 74908; Docket No. 2003–16128).

G. 2003 Final Rule Establishing MY 2005–2007 Light Truck Standards

On April 7, 2003, the agency published a final rule establishing light truck CAFE standards for MYs 2005–2007: 21.0 mpg for MY 2005, 21.6 mpg for MY 2006, and 22.2 mpg for MY 2007 (68 FR 16868; Docket No. 2002–11419; Notice 3). The agency determined that these levels are the maximum feasible CAFE levels for light trucks for those model years, balancing the express statutory factors and other included or relevant considerations such as the impact of the standard on motor vehicle safety and employment. NHTSA estimated that the fuel economy increases required by the standards for MYs 2005–2007 would generate approximately 3.6 billion gallons of gasoline savings over the 25-year lifetime of the affected vehicles.

In establishing the standards, the agency analyzed cost-effective technological improvements that could be made to the product offerings planned by the manufacturers. The agency's projection of CAFE capability was based on the manufacturers' most recently submitted product plans and technological improvements we determined to be appropriate and feasible within the time frame. In the final rule, we stated that we did not believe the final rule will necessitate, nor did we believe it will result in, any ''mix shifting,'' *e.g.*, decreasing the production volumes of vehicles that are heavier or larger and thus have relatively low fuel economy and increasing the production volumes of lighter or smaller vehicles, which might result in significant employment and/or average weight reductions were it to occur.

We further expressed our belief that the final rule for MYs 2005–2007 will neither necessitate nor induce manufacturers to make reductions in vehicle weight that will adversely affect the overall safety of people traveling on the roads of America. Indeed, as the NAS report noted, there are many technological means that are available to manufacturers for improving fuel economy and are much more cost-effective than weight reduction through materials substitution. Accordingly, we did not rely on weight reduction.

We recognized in the final rule that the standard established for MY 2007 could be a challenge for General Motors. We recognized further that, between the issuance of the final rule and the last (MY 2007) of the model years for which standards were being established, there was more time than in previous light truck CAFE rulemakings for significant changes to occur in external factors capable of affecting the achievable levels of CAFE. These external factors include fuel prices and the demand for vehicles with advanced fuel saving technologies, such as hybrid electric and advanced diesel vehicles. We said that changes in these factors could lead to higher or lower levels of CAFE, particularly in MY 2007. Recognizing that it may be appropriate to re-examine the MY 2007 standard in light of any significant changes in those factors, the agency reaffirms its plans to monitor the compliance efforts of the manufacturers.

H. 2003 comprehensive plans for addressing vehicle rollover and compatibility

In September 2002, NHTSA completed a thorough examination of the opportunities for significantly improving vehicle and highway safety and announced the establishment of interdisciplinary teams to formulate comprehensive plans for addressing the four most promising problem areas.[11] Based on the work of the teams, the agency issued detailed reports analyzing each of the problem areas and recommending coordinated strategies that, if implemented effectively, will lead to significant improvements in safety.

Two of the problems areas are vehicle rollover and vehicle compatibility. The reports on those areas identify a series of vehicle, roadway and behavioral strategies for addressing the problems.[12] Among the vehicle strategies, both reports identified reform of the CAFE program as one of the steps that needed to be taken to reduce those problems:

The current structure of the CAFE system can provide an incentive to manufacturers to downweight vehicles, increase production of vehicle classes that are more susceptible to rollover crashes, and produce a less homogenous fleet mix. As a result, CAFE is critical to the vehicle compatibility and rollover problems.

(a) Highlights of Current Program

In its final rule setting new CAFE standards for MY 2005–2007 light trucks, NHTSA stated that it intends to examine possible reforms to the CAFE system, including those recommended in the National Academy of Sciences' CAFE report.

(b) Proposed Initiatives

Consistent with its statutory authority, the agency plans to address issues relating to the structure, operation and effects of potential changes to the CAFE system and CAFE standards. In taking this broad view, the agency recognizes that the regulation of the (sic) fuel economy can have substantial effects on vehicle safety, the composition of the light vehicle fleet, the economic well-being of the automobile industry and, of course, our nation's energy security.

(c) Expected Program Outcomes

It is NHTSA's goal to identify and implement reforms to the CAFE system that will facilitate improvements in fuel economy without compromising motor vehicle safety or American jobs. * * *

* * * NHTSA intends to examine the safety impacts, both positive and negative, that may result from any modifications to CAFE as it now exists. Regardless of the root causes, it is clear that the downsizing of vehicles that occurred during the first decade of the CAFE program had serious safety consequences. Changes to the existing system are likely to have equally significant impacts. NHTSA is determined to ensure that these impacts are positive.

I. 2003 ANPRM

On December 29, 2003, the agency published an ANPRM seeking comment on various issues relating to reforming the CAFE program (68 FR 74908; Docket

[11] A fifth problem area was announced in 2004, improving traffic safety data.

[12] See *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/IPTRolloverMitigationReport/; http://www-nrd.nhtsa.dot.gov/departments/nrd-11/aggressivity/IPTVehicleCompatibilityReport/.*

No. 2003–16128).[13] The agency sought comment on possible enhancements to the program that would assist in further fuel conservation, while protecting motor vehicle safety and the economic vitality of the automobile industry. The agency indicated that it was particularly interested in structural reform. This document, while not espousing any particular form of reform, sought more specific input than the 2002 RFC on various options aimed at adapting the CAFE program to today's vehicle fleet and needs.

1. Need for reform

The 2003 ANPRM discussed the principal criticisms of the current CAFE program that led the agency to explore light truck CAFE reform (68 FR 74908, at 74910–13. First, the energy-saving potential of the CAFE program is hampered by the current regulatory structure. The Unreformed approach to CAFE does not distinguish between the various market segments of light trucks, and therefore does not recognize that some vehicles designed for classification purposes as light trucks may achieve fuel economy similar to that of passenger cars. The Unreformed CAFE approach instead applies a single standard to the light truck fleet as a whole, encouraging manufacturers to offer small light trucks that will offset the larger vehicles that get lower fuel economy. A CAFE system that more closely links fuel economy standards to the various market segments reduces the incentive to design vehicles that are functionally similar to passenger cars but classified as light trucks.

Second, because weight strongly affects fuel economy, the current light truck CAFE program encourages vehicle manufacturers to reduce weight in their light truck offerings to achieve greater fuel economy.[14] As the NAS report and a more recent NHTSA study have found, downweighting of the light truck fleet, especially those trucks in the low and medium weight ranges, creates more safety risk for occupants of light trucks and all motorists combined.[15]

Third, the agency noted the adverse economic impacts that might result from steady future increases in the stringency of CAFE standards under the current regulatory structure. Rapid increases in the light truck CAFE standard could have serious adverse economic consequences. The vulnerability of full-line firms to tighter CAFE standards does not arise primarily from poor fuel economy ratings within weight classes, *i.e.*, from less extensive use of fuel economy improving technologies. As explained in the 2003 ANPRM, their overall CAFE averages are low compared to manufacturers that produce more relatively light vehicles because their sales mixes service a market demand for bigger and heavier vehicles capable of more demanding utilitarian functions. An attribute-based (weight and/or size) system could avoid disparate impacts on full-line manufacturers that could result from a sustained increase in CAFE standards.

2. Reform options

In discussing potential changes, the agency focused primarily on structural improvements to the current CAFE program authorized under the current statutory authority, and secondarily on definitional changes to the current vehicle classification system and whether to include vehicles between 8,500 to 10,000 lbs. GVWR.

The ANRPM discussed two structural reforms. The first reform divided light trucks into two or more classes based on vehicle attributes. The second was an attribute-based ''continuous-function'' system, such as that discussed in the NAS report. We chose various measures of vehicle weight and/or size to illustrate the possible design of an attribute-based system. However, we also sought comment as to the merits of using other vehicle attributes as the basis of an attribute-based system.

The 2003 ANPRM also presented two potential options under which vehicles with a GVWR of up to 10,000 lbs. could be included under the CAFE program, were the agency to make the requisite determinations to include them. One option would be to include vehicles defined by EPA as medium duty passenger vehicles (65 FR 6698, 6749–50, 6851–6852) for use in the CAFE program. This definition would essentially make SUVs and passenger vans between 8,500 and 10,000 lbs. GVWR subject to CAFE, while continuing to exclude most medium- and heavy-duty pickups and most medium- and heavy-duty cargo vans that are primarily used for agricultural and commercial purposes. A second option would be to make all vehicles between 8,500 and 10,000 lbs GVWR subject to CAFE standards.

Through the 2003 ANPRM, the agency intended to begin a public discussion on potential ways, within current statutory authority, to improve the CAFE program to better achieve our public policy objectives. The agency set forth a number of possible concepts and measures, and invited the public to present additional concepts. The agency expressed interest in any suggestions toward revamping the CAFE program in such a way as to enhance overall fuel economy while protecting occupant safety and the economic vitality of the auto market.

The agency also discussed and sought comment on the classification of vehicles as passenger cars or light trucks. As suggested in numerous of the comments, we are proposing only to clarify the applicability of the flat floor provision to vehicles with folding seats. See section IX.B below. We are not otherwise changing those classification regulations at this time in part because we believe an orderly transition to Reformed CAFE could not be accomplished if we simultaneously change which vehicles are included in the light truck program and because, as applied in MY 2011, Reformed CAFE is likely to reduce the incentive to produce vehicles classified as light trucks instead of as passenger cars. We may revisit the definitional issues as appropriate in the future.

J. Recent developments

1. Factors underscoring need for reform

Since our ANPRM was published in 2003, there have been two important complicating factors that underscore the need for CAFE reform. One factor is the fiscal problems reported by General Motors and Ford, while the other is the recent surge in gasoline prices, a development that may be exacerbating the financial challenges faced by both companies.

The two largest, full-line light-truck manufacturers, General Motors and Ford, have reported serious financial difficulties. The investment community has downgraded the bonds of both companies. Further, both companies have announced significant layoffs and other actions to improve their financial

[13] On the same date, we also published a request for comments seeking manufacturer product plan information for MYs 2008–2012 to assist the agency in analyzing possible reforms to the CAFE program which are discussed in a companion notice published today. (68 FR 74931) The agency sought information that would help it assess the effect of these possible reforms on fuel economy, manufacturers, consumers, the economy, motor vehicle safety and American jobs.

[14] Manufacturers can reduce weight without changing the fundamental structure of the vehicle by using lighter materials or eliminating available equipment or options. In contrast, reducing vehicle size, and particularly footprint, generally entails an alteration of the basic architecture of the vehicle.

[15] However, both studies also suggest that if downweighting is concentrated on the heaviest light trucks in the fleet there would be no net safety impact, and there might even be a small fleet-wide safety benefit. There is substantial uncertainty about the curb weight cut-off above which this would occur.

condition. While these financial problems did not give rise to the Administration's CAFE reform initiative, the financial risks now faced by these companies, including their workers and suppliers, underscore the importance to full-line vehicle manufacturers of establishing an equitable CAFE regulatory framework.

There has also been a sharp and sustained surge in gasoline prices since our last light truck final rule in April 2003 and the December 2003 ANPRM on CAFE reform. According to the Energy Information Administration (EIA), the retail price for gasoline in April 2003 was $1.59 per gallon and in December 2003 was $1.48 per gallon.[16] The weekly U.S. retail price for the week of August 15, 2005 was $2.55 per gallon.[17]

Although the surge of gasoline prices highlights the need for both more energy supplies and intensified conservation efforts, it is important to recognize that CAFE standards for MYs 2008–2011 should not be based on current gasoline prices. They should be based on our best forecast of what average real gasoline prices will be in the U.S. during the years that these vehicles will be used by consumers: the 26-year period beginning in 2008 and extending almost to 2040.[18] Since miles of travel tend to be concentrated in the early years of a vehicle's lifetime, the projected gasoline price in the 2008–2020 period is particularly relevant for this rulemaking.

When we issued the April 2003 final rule for MY 2005–2007 light truck CAFE, we based the final economic assessment of that rule on estimated gasoline prices at the pump that ranged from $1.37 per gallon in 2005 to $1.46 per gallon in 2030 (based on year 2000 prices). Those prices, which are set forth year by year in our April 2003 Final Economic Assessment (Docket No. 11419–18358, page VIII–7), were based on the Energy Information Administration's ''Annual Energy Outlook 2003.''

The PRIA for this proposed rule has been based on projected gasoline prices from the more recent Annual Energy Outlook 2005 (AEO2005) (published in 2004 before the recent price rises), which projected gasoline prices ranging from $1.51 to $1.58 per gallon.[19] These are the most current long-term forecasts for gasoline prices available from EIA at this time. EIA has, however, issued revised short-term forecasts that project gasoline prices remaining above $2 through late 2006, significantly higher than what was projected in AEO2005. Further, we note that in its August ''International Energy Outlook 2005,'' EIA's reference case for future oil prices ''has adopted the Annual Energy Outlook 2005 (AEO2005) October futures case, which has an assumption of higher prices than the AEO2005 reference case and now appears to be a more likely projection for oil prices.'' During the rulemaking, we will continue to consult with EIA and other experts on projections of likely gasoline prices over the anticipated lifetime of light trucks sold in MYs 2008–2011, including the development of gasoline price projections for EIA's Annual Energy Outlook 2006 (AEO2006). EIA will be issuing AEO2006, with revised long-term forecasts, in November 2005. We are seeking public comment on the appropriate gasoline price forecast to use in the final rule, including consideration of the AEO2006 forecast.

2. Reports updating fuel economy potential

Additionally, the agency has placed in the docket for this notice a 2005 document, prepared under the auspices of the Department of Energy (DOE) for NHTSA, updating the estimates of light-truck fuel economy potential and costs in the 2001 NAS report, ''Effectiveness and Import of Corporate Average Fuel Economy (CAFE) Standards. The agency seeks comments on this document. After having this document peer reviewed, the agency will place the peer reviewers' reports in the docket for public comment.

We note that the introduction of the 2005 DOE document states that that document does not address the costs and benefits of hybrid and diesel technology because these matters have been documented in a 2004 Energy and Environmental Analysis, Inc. (EEA) study for the DOE. The title of that study is ''Future Potential of Hybrid and Diesel Powertrains in the U.S. Light-Duty Vehicle Market.''[20] The agency has placed that study in the docket and seeks comments on it as well.

III. The Unreformed CAFE proposal for MYs 2008–2010

As part of our Reformed CAFE proposal, we have crafted a transition period in which manufacturers have the option of complying with either the Reformed or the Unreformed CAFE systems. During the transition period, the requirements under the Reformed CAFE systems are linked to those of the Unreformed system. The Reformed CAFE standards for MYs 2008–2010 would be set at levels intended to ensure that the industry-wide cost of the Reformed standards are roughly equivalent to the industry-wide cost of the Unreformed CAFE standards in those model years. This approach has several important advantages. If the Unreformed standards are judged to be economically practicable and since the Reformed standards spread the cost burden across the industry to a greater extent, equalizing the costs between the two systems ensures that the Reformed standards will be within the realm of economic practicability. Further, this approach promotes an orderly and effective transition to the Reformed CAFE system since experience will be gained prior to MY 2011. In this section, we describe how we developed the Unreformed CAFE standards.

In developing this proposal for Unreformed CAFE standards, we first analyzed the data submitted by the manufacturers using the same type of analyses we employed in establishing light truck CAFE standards for MYs 2005–2007. We determined which manufacturers have a significant share of the light truck market, analyzed data to determine the CAFE ''baseline'' for each of those companies, and then conducted a manual engineering analysis (the Stage Analysis)—in conjunction with a computer-based engineering analysis (the Volpe Analysis)—to determine what technologies each company with a significant share of the market could use to enhance its overall fleet fuel economy average.[21]

[16] See *http://tonto.eia.doe.gov/oog/info/gdu/gaspump.html.*

[17] See *http://www.eia.doe.gov/oil_gas/petroleum/data_publications/wrgp/mogas_home_page.html* and *http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp.*

[18] To calculate the fuel savings for the light trucks manufactured in a model year, we consider the savings over a 26-year period. The number of light trucks manufactured during each model year that remains in service during each subsequent calendar year is estimated by applying estimates of the proportion of light trucks surviving to each age up to 26 years (see Table VIII–2 in the PRIA). At the end of 26 years, the proportion of light trucks remaining in service falls below 10 percent.

[19] *http://www.eia.doe.gov/oiaf/aeo/index.html.*

[20] See *http://www-cta.ornl.gov/cta/Publications/pdf/ORNL_TM_2004_181_HybridDiesel.pdf.*

[21] The ''Stage'' Analysis primarily involved application of the agency's engineering judgment and expertise about possible adjustments to the detailed product plans submitted by manufacturers. The methodology of the Volpe model was described in detail in the NPRM and Final Rule establishing light truck CAFE standards for MYs 2005–2007. The model has been updated and refined, but remains fundamentally the same. The updated model has been peer reviewed. The model documentation, including a description of the input assumptions and process, as well as peer review reports, will be made available in the rulemaking docket for this

Continued

Giving particular regard to the capabilities of the least capable manufacturer with a significant share of the market, we have tentatively determined the maximum feasible fuel economy levels for MYs 2008–2010. In doing so, we took into account the four statutory factors (the nation's need to conserve energy, technological feasibility, economic practicability (including employment consequences) and the impact of other regulations on fuel economy) as well as other included or relevant considerations such as the need to protect against adverse safety consequences.

As noted above, we have tentatively determined that the following fuel economy standards for MYs 2008–2010 are the maximum feasible levels under the Unreformed approach to light truck CAFE:

MY 2008—22.5 mpg
MY 2009—23.1 mpg
MY 2010—23.5 mpg

A. Baseline for determining manufacturer capabilities in MYs 2008–2010

In evaluating the manufacturers' fuel economy capabilities for MYs 2008–2010, we analyzed manufacturers' projections of their CAFE and their underlying product plans and considered what, if any, additional actions the manufacturers could take to improve their fuel economy. In order to determine the fuel economy capabilities of manufacturers during MYs 2008–2010, we first determined the manufacturers' fuel economy baselines for those years. That is, we determined the fuel economy levels that manufacturers are planning to achieve in those years, given the level of the CAFE standards that they were required to comply with in MY 2007. We relied upon the information submitted by manufacturers in response to the December 29, 2003 request for product plans and any additional manufacturer updates, to determine those plans.

For those manufacturers that did not submit information for those model years, we relied on data from the latest model year for which information from the manufacturers is available. To the extent that additional public information was available regarding the MY 2008–2010 product plans, we incorporated that information into the baselines for those manufacturers.

We note that although manufacturers may receive credit toward their CAFE compliance by placing alternative fuel vehicles into the market through MY 2008, the statute prohibits us from taking such benefits into consideration in determining the maximum feasible fuel economy standard (49 U.S.C. 32902(h)). Accordingly, the baselines and projections do not reflect those credits.

1. General Motors

General Motors' share of the light truck market for MY 2004 was 31.8 percent. In its submission of MY 2008–2010 product plans, General Motors projected that, based on those plans, its light truck fleet would achieve a CAFE level of 21.2 mpg for MY 2008, 21.3 mpg for MY 2009, and 21.3 mpg for MY 2010. Its plans were based on sales of GMC, Chevrolet, Pontiac, Buick, Cadillac, Hummer, SAAB, and Saturn vehicles.[22]

2. Ford

Ford Motor Company controlled 25.7 percent of the light truck market in the U.S. in MY 2004. Ford projected that its light truck fleet would achieve a CAFE level of 21.6 mpg for MY 2008, 22.0 mpg for MY 2009 mpg, and 22.3 mpg for MY 2010. Its data were based on sales of Ford branded vehicles, as well as Lincoln, Mercury, Mazda, Land Rover and Volvo branded vehicles.

3. DaimlerChrysler

DaimlerChrysler controlled 19.8 percent of the U.S. light truck market in MY 2004. DaimlerChrysler submitted product plans for MYs 2008–2010, and projected that its light truck fleet would achieve a CAFE level of 21.9 mpg for MY 2008, 22.3 mpg for MY 2009, and 22.3 mpg for MY 2010. Its data were based on sales of Chrysler, Jeep, Dodge, Mercedes, Mitsubishi, Smart[23], and Sprinter brand vehicles.

4. Other manufacturers

Of the remaining manufacturers, Nissan and Hyundai (including Kia) provided information regarding sales and fuel economy projections for their vehicles through MY 2010.

The balance of the remaining manufacturers did not provide any MY 2008–2010 information.[24] For these manufacturers (Toyota, Honda, Subaru, Isuzu, Suzuki, BMW, Porsche, and Volkswagen), we relied on manufacturer information from the latest model year for which it was available, and publicly available information regarding their MY 2008–2010 product plans. Toyota, Honda, and Subaru provided fuel economy projections for MYs 2005–2007. The projected levels of fuel economy provided by Toyota and Honda would comply with the CAFE standard for MY 2007. Accordingly, we used those projected levels for each of MYs 2008–2010. Subaru's submission was supplemented by publicly available information regarding its future vehicle fleet to arrive at its MY 2008–2010 baselines.

Isuzu, Suzuki, BMW, Porsche, and Volkswagen did not submit any response. For Isuzu and Suzuki's baselines, we used the latest year for which we had product data (MY 2005) and combined those data with publicly available information regarding Isuzu and Suzuki's future product plans. Further, since all of the light trucks produced by Isuzu and Suzuki are sister vehicles to General Motors vehicles, we were able to determine the technical details for those vehicles. BMW, Porsche, and Volkswagen previously paid fines in lieu of complying with the MY 2002 and 2003 light truck CAFE standards. The agency assumes that because of that past history and their low light truck production volumes, BMW, Porsche, and Volkswagen will continue to pay fines instead of bringing their fleets into compliance. Therefore, we relied on the fuel economy levels from MY 2005 in projecting the baseline for these three manufacturers.

Table 1 provides the baseline values for manufacturers other than General Motors, Ford, and DaimlerChrysler:

notice. The agency will respond to the reports, and the public comments on those reports, at the time of the final rule.

[22] The agency does not consider the overall fleet fuel economy projection for a manufacturer to be entitled to confidential treatment, whether derived from our own analysis or provided by the manufacturer. The agency has consistently published this information in all prior rulemakings establishing CAFE standards. See for example, 68 FR 16868; April 7, 2003, 67 FR 77015; December 16, 2002, 59 FR 16312; April 6, 1994, and 53 FR 11074; April 5, 1988.

[23] The agency notes that some vehicles and vehicle lines that were included in a manufacturer's product plan ultimately may not be produced. However, the agency relies on the product plans as submitted. Further, if any vehicles are dropped, they are expected to constitute a small percentage of a manufacturer's fleet and have minimal impact on a manufacturer's projected capabilities.

[24] In the past, these manufacturers have generally not provided such information since they have either chosen to pay civil penalties instead of complying with the CAFE standards or had fleet fuel economy averages far enough above the standards that it was not necessary for them to make additional improvements in fuel economy.

TABLE 1.—BASELINE VALUES FOR MANUFACTURERS OTHER THAN GENERAL MOTORS, FORD AND DAIMLERCHRYSLER

[In mpg]

	MY 2008	MY 2009	MY 2010
Toyota	22.9	22.9	22.9
Honda	24.4	24.4	24.4
Nissan	20.7	20.8	21.2
Hyundai	21.8	23.2	22.8
Subaru	25.7	26.2	26.2
BMW	21.3	21.3	21.3
Porsche	16.8	16.8	16.8
Isuzu	20.4	20.2	20.1
Suzuki	21.9	21.9	21.9
Volkswagen	18.8	18.8	18.8

B. Selection of Proposed Unreformed CAFE Standards—Process for Determining Maximum Feasible Levels

We have tentatively concluded that the proposed standards for the Unreformed CAFE system are technologically feasible and economically practicable for those manufacturers with a substantial share of the light truck market (General Motors, Ford, and DaimlerChrysler), are capable of being met without substantial product restrictions, and will enhance the ability of the nation to conserve fuel and reduce its dependence on foreign oil.

In determining the maximum feasible fuel economy level, we are required to consider the four statutory factors and are permitted to consider additional societal considerations. The agency has historically included the potential for adverse safety consequences when deciding upon a maximum feasible level.[25] The overarching principle that emerges from the enumerated factors and the court-sanctioned practice of considering safety and links them together is that CAFE standards should be set at a level that will achieve the greatest amount of fuel savings without leading to adverse economic or other societal consequences.

As discussed in many past fuel economy notices, the legislative history of EPCA explicitly states that NHTSA is to take industry-wide considerations into account in determining the maximum feasible CAFE levels, and not necessarily base its determination on any particular company's asserted or projected abilities. This means that CAFE standards will not necessarily be set at the precise level that is associated with the plans of the ''least capable manufacturer'' with a substantial share of the market or that is projected by the agency for that manufacturer. (For a discussion of the industry-wide considerations and the origins of the ''least capable manufacturer'' concept, see section IV.A.2.b below.)

It means further that we must take particular care in considering the statutory factors with regard to these manufacturers—weighing their asserted capabilities, product plans and economic conditions against agency projections of their capabilities, the need for the nation to conserve energy and the effect of other regulations (including motor vehicle safety and emissions regulations) and other public policy objectives.

This approach is consistent with the Conference Report on the legislation enacting the CAFE statute:

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer that might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer.

S. Rep. No. 94–516, 94th Congress, 1st Sess. 154–155 (1975).

The agency has historically assessed whether a potential CAFE standard is economically practicable in terms of whether the standard is one ''within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry.''[26] See, e.g., *Public Citizen,* 848 F.2d at 264. In essence, in determining the maximum feasible level of CAFE, the agency assesses what is technologically feasible for manufacturers to achieve without leading to adverse economic consequences, such as a significant loss of jobs or the unreasonable elimination of consumer choice.

At the same time, the law does not preclude a CAFE standard that poses considerable challenges to any individual manufacturer. The Conference Report makes clear, and the case law affirms: ''(A) determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy.'' *CAS,* 793 F.2d at 1338–9. Instead, the agency is compelled ''to weigh the benefits to the nation of a higher fuel economy standard against the difficulties of individual automobile manufacturers.'' Id. The statute permits the imposition of reasonable, ''technology forcing'' challenges on any individual manufacturer, but does not contemplate standards that will result in ''severe'' economic hardship by forcing

[25] See, e.g., *Center for Auto Safety* v. *NHTSA (CAS),* 793 F. 2d 1322 (D.C. Cir. 1986) (Administrator's consideration of market demand as component of economic practicability found to be reasonable); *Public Citizen* 848 F.2d 256 (Congress established broad guidelines in the fuel economy statute; agency's decision to set lower standard was a reasonable accommodation of conflicting policies). As the United States Court of Appeals pointed out in upholding NHTSA's exercise of judgment in setting the 1987–1989 passenger car standards, ''NHTSA has always examined the safety consequences of the CAFE standards in its overall consideration of relevant factors since its earliest rulemaking under the CAFE program.'' *Competitive Enterprise Institute* v. *NHTSA (CEI I),* 901 F.2d 107, 120 at n.11 (D.C. Cir. 1990).

[26] In adopting this interpretation in the final rule establishing the MY 1981–1984 fuel economy standards for passenger cars (June 30, 1977; 42 FR 33534, at 33536–7), the Department rejected several more restrictive interpretations. One was that the phrase means that the standards are statutorily required to be cost-beneficial. The Department pointed out that Congress had rejected a manufacturer-sponsored amendment to the Act that would have required standards to be set at a level at which benefits were commensurate with costs. It also dismissed the idea that economic practicability should limit standards to free market levels that would be achieved with no regulation.

reductions in employment affecting the overall motor vehicle industry.[27]

As a first step toward ensuring that the CAFE levels selected as the maximum feasible levels under Unreformed CAFE will not lead to adverse consequences, we reviewed in detail the confidential product plans provided by the manufacturers with a substantial share of the light truck market (General Motors, Ford and DaimlerChrysler) and assessed their technological capabilities to go beyond those plans. By doing so, we are able to determine tentatively the extent to which each can enhance their fuel economy performance using technology.

C. Technologically Feasible Additions to Baseline

The agency has analyzed potential technological improvements to the product offerings for each manufacturer with a substantial share of the light truck market and for the remaining light truck manufacturers.[28] Under the Unreformed system, we focused on General Motors, Ford, and DaimlerChrysler as the manufacturers with substantial shares of the light truck market. We also conducted analyses of the potential for the other manufacturers to achieve fuel economy levels above their baselines.

For the purpose of analyzing the potential technological improvements, we applied a three-stage engineering analysis that we relied upon in previous light truck fuel economy rulemakings (Stage Analysis).

At each stage of that analysis, we added technologies based on our engineering judgment and expertise about possible adjustments to the detailed product plans submitted in response to the 2003 request for product plans. Our decision whether and when to add a technology reflected our consideration of the practicability of applying a specific technology and the necessity for lead-time in its application.

The agency recognized that vehicle manufacturers must have sufficient lead time to incorporate changes and new features into their vehicles. Further, in making its lead time determinations, the agency considered the fact that vehicle manufacturers follow design cycles when introducing or significantly modifying a product. In addition to considering lead time, the agency added technologies in a cost-minimizing fashion. That is, it generally first added technologies that were most cost-effective.

In evaluating which technologies to apply, and the sequence in which to apply them, we followed closely the NAS report. The NAS report estimated the incremental benefits and the incremental costs of technologies that may be applicable to actual vehicles of different classes and intended uses (see NAS p. 40).[29] The NAS report also identified what it called ''cost-efficient technology packages,'' i.e., combinations of technologies that would result in fuel economy improvements sufficient to cover the purchase price increases that such technologies would require (see NAS p. 64).

The Stage I analysis includes technologies that manufacturers state as being available for use by MY 2008 or earlier, but are choosing not to use them in their product plans. Many of these technologies are currently being used in today's light duty truck fleet. These technologies include non-powertrain applications such as low rolling resistance tires, low friction lubricants, aerodynamic drag reduction, and electric power steering pumps.

The Stage II analysis includes two major categories of technological improvements to the manufacturer's fleets, the timing of which is tied as nearly as possible to planned model change and engine introduction years. The first of these categories is transmission improvements, which consists of the introduction and expanded use of 5-speed and 6-speed transmissions and continuously variable transmissions (CVTs). The application of CVTs was restricted to vehicles that are not designed for rugged off-road applications and/or the need to haul heavy loads, such as smaller unibody SUVs. The second category was engine improvements, and consisted of gradually upgrading all light truck engines to include multi-valve overhead camshafts, introducing engines with more than 2-valves per cylinder, applying variable valve timing/variable valve lift and timing to multi-valve overhead camshaft engines, and applying cylinder deactivation to 6- and 8-cylinder engines.

The Stage III analysis included projections of the potential CAFE increase that could result from the application of diesel engines and hybrid powertrains to some products. Both diesel engines and hybrid powertrains appear in several manufacturers plans within the MY 2008–2010 timeframe, and other manufacturers have publicly indicated that they are looking seriously into both technologies.

Some of the technologies considered under the Stage Analysis have been used in production for over a decade; e.g., engine friction reduction and low friction lubricants. Some have only recently been incorporated in light trucks; e.g., 5-speed and 6-speed automatic transmissions and variable valve timing. Others have been under development for a number of years, but have not yet been produced in significant quantity for an extended period of time (e.g., cylinder deactivation, variable valve lift and timing, CVT, integrated starter generator, and hybrid drive trains).

Our analysis included the possibility of limited vehicle weight reduction for vehicles over 5,000 lbs. curb weight where we determined that weight reduction would not reduce overall safety and would be a cost effective choice.[30] We determined that reducing the weight of these vehicles would not reduce overall safety. The Kahane study found that the net safety effect of removing 100 pounds from a light truck is zero for light trucks with a curb weight greater than 3,900 lbs.[31] However, given the significant statistical uncertainty around that figure, we

[27] In the past, the agency has set CAFE standards above its estimate of the capabilities of a manufacturer with less than a substantial, but more than a de minimus, share of the market. See, e.g., *CAS,* 793 F.2d at 1326 (noting that the agency set the MY 1982 light truck standard at a level that might be above the capabilities of Chrysler, based on the conclusion that the energy benefits associated with the higher standard would outweigh the harm to Chrysler, and further noting that Chrysler had 10–15 percent market share while Ford had 35 percent market share). On other occasions, the agency reduced an established CAFE standard to address unanticipated market conditions that rendered the standard unreasonable and likely to lead to severe economic consequences. 49 FR 41250, 50 FR 40528, 53 FR 39275; see *Public Citizen,* 848 F.2d at 264.

[28] A more detailed discussion of these issues is contained in the agency's PRIA, which has been placed in the docket for this notice. Some of the information included in the PRIA, including the details of manufacturers' future product plans, has been determined by the Agency to be confidential business information the release of which could cause competitive harm. The public version of the PRIA omits the confidential information. The PRIA discusses in detail the fuel economy enhancing technologies expected to be available during the MY 2008–2010 time period.

[29] Additionally, as noted above, the agency has placed in the docket for this notice a document, prepared under the auspices of the U.S. Department of Energy for NHTSA, that updates the estimates of light-truck fuel economy potential in the 2001 National Academy of Sciences (NAS) report, ''Effectiveness and Impact of Corporate Average Fuel Economy (CAFE) Standards.''

[30] The amount of projected weight reduction was two percent for light trucks with a curb weight between 5,000 and 6,000 lbs and up to four percent for light trucks with a curb weight over 6,000 lbs.

[31] Kahane, Charles J., PhD, Vehicle Weight, Fatality Risk and Crash Compatibility of Model Year 1991–99 Passenger Cars and Light Trucks, October 2003. DOT HS 809 662. Page 161. Docket No. NHTSA–2003–16318 (*http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809662.pdf*).

assumed a confidence bound of approximately 1,000 lbs. and used 5,000 lbs. as the threshold for considering weight reduction.[32] We used weight reduction primarily in conjunction with a planned vehicle redesign or freshening and sometimes in concert with a reduction in aerodynamic drag.

Further, our Stage Analysis does not apply technologies where it is not technically sensible to do so. For instance, we estimate that replacing an overhead valve engine with a multi-valve overhead camshaft engine of the same displacement and replacing a 4-speed automatic transmission with a 5- or 6-speed automatic transmission offer about the same potential level of improvement. One of them may be more attractive to a particular manufacturer because of its cost, ease of manufacturing, or the model lines to which it would apply.

The technologically feasible fuel economy levels determined under the Stage Analysis were then input into the Volpe model. The Volpe model uses a technology application algorithm developed by Volpe Center staff to apply technologies to manufacturers' baselines in order to achieve the fuel economy levels produced under the Stage Analysis. This algorithm systematically applies consistent cost and performance assumptions to the entire industry, as well as consistent assumptions regarding economic decision-making by manufacturers. Technologies were selected and applied in order of ''effective cost,'' (total cost − fine reduction − fuel savings value) / (number of affected vehicles).[33] This formula is a private cost concept, *i.e.*, it looks at costs to the manufacturer. It is used to predict how a manufacturer would sequence the addition of technologies to meet a given standard.

The level of fuel economy improvement resulting from the Stage Analysis provides the basis for the proposed Unreformed CAFE standards. The Volpe model was then used to estimate benefits and costs. The Volpe model is given, as an input, the level of fuel economy improvement and then proceeds to analyze what technologies can be added to meet the standard determined by the Stage Analysis. Although similar, the two analyses do not apply exactly the same technologies. Both are merely ways of achieving the given standard, not predictions of how manufacturers will actually meet it. As explained below in the section on economic practicability and other economic issues, additional analysis was performed to ensure that the proposed Unreformed CAFE standards are economically practicable for the industry.

In its submission, General Motors described a variety of technologies that could be used to improve fuel economy. For each such technology, General Motors included its estimated fuel economy benefit, the basis for that estimate, whether the benefit was direct or interactive, a description of how the technology works and how it increases fuel economy, when the technology would be available for use, its potential applications, where it is currently employed in General Motors' light truck fleets, where the technology could potentially be used, risks in employing the technology, and potential impacts on noise, vibration and harshness (NVH), safety, emissions, cargo and towing capacity.

The agency relied on these descriptions in determining which technologies General Motors could employ in its fleet during MYs 2008–2010.[34] To assess the fuel economy impacts of these technologies, we used either the NAS report's mid-range numbers [35] or, when General Motors submitted higher numbers for a particular technology, we used General Motors' numbers.

As a result of the Stage Analysis, we have tentatively concluded that, for MYs 2008–2010, General Motors is the least capable of the manufacturers that have a significant share of the light truck market. To ensure that the proposed Unreformed CAFE improvements would not lead to economically severe consequences for the industry, we have given particular regard to General Motors' projected capabilities when balancing the statutory factors to arrive at the proposed standards.

We note that when we established the light truck CAFE standards for MYs 2005–2007, we set the standard for MY 2007 at a level somewhat beyond that we had determined technologically achievable by General Motors, then also the ''least capable manufacturer.'' We will carefully review the updated product plans that we anticipate General Motors will submit and will review the projections for General Motors' capability when deciding upon final light truck standards for these model years. As directed by law, we will balance all the statutory factors, as well as our concern for motor vehicle safety, before conclusively determining the appropriate level of light truck CAFE standards for MYs 2008–2010.

Ford and DaimlerChrysler each submitted information similar to that provided by General Motors. The agency engaged in the same type of analysis in assessing the potential fuel economy capabilities for those manufacturers. The agency also engaged in the same type of analysis in assessing the potential fuel economy capabilities for Honda, Hyundai, Nissan and Toyota, although the information provided by those companies was less detailed than that of DaimlerChrysler, Ford and General Motors.

Upon reviewing the product plans and making adjustments as described—and balancing the nation's need to conserve energy with what is technologically feasible, economically practicable and unlikely to produce adverse consequences—we have tentatively determined that the following light truck CAFE standards are the maximum feasible fuel economy levels achievable:

MY 2008–22.5.
MY 2009–23.1.
MY 2010–23.5.

D. Economic Practicability and Other Economic Issues

As explained above, the agency has historically reviewed whether a CAFE standard is economically practicable in

[32] See the discussion of ''Effect of Weight and Performance Reductions on Light Truck Fuel Economy'' in Chapter V of the PRIA.

[33] In the current model year, the system begins by carrying over any technologies applied in the preceding model year, based on commonality of engines and transmissions, as well as any identified predecessor/successor relationships among vehicle models. At each subsequent step toward compliance by a given manufacturer in the current model year, the system considers all engines, transmissions, and vehicles produced by the manufacturer and all technologies that may be applied to those engines, transmissions, and vehicles, where the applicability of technologies is governed by a number of constraints related to engineering and product planning. The system selects the specific application of a technology (*i.e.*, the application of a given technology to a given engine, transmission, vehicle model, or group of vehicle models) that yields the lowest ''effective cost'', which the system calculates by taking (1) the cost (retail price equivalent) to apply the technology times the number of affected vehicles, and subtracting (2) the reduction of civil penalties achieved by applying the technology, and subtracting (3) the estimated value to vehicle buyers of the reduction in fuel outlays achieved by applying the technology, and dividing the sum of these components by the number of affected vehicles.

[34] The determination of technology application that could be employed by a specific manufacturer was based on confidential information provided by each manufacturer. The nature of this confidential information would become apparent from listing the technologies applied by the agency and therefore our discussion in the public document is of a general nature.

[35] The NAS report (p. 42) assessed the fuel consumption impact of technologies applicable to light trucks, including emerging technologies. For most of these technologies, the NAS report presented a range of potential fuel consumption improvement attributable to each technology.

terms of whether the standard is one ''within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship for the industry.'' See, *e.g.*, *Public Citizen*, 848 F.2d at 264. In the Stage Analysis, technologies are applied to project fuel economy levels that would be technologically feasible for a manufacturer. When considering economic practicability, the agency reviews whether technologically feasible levels may lead to adverse economic consequences, such as a significant loss of sales or the unreasonable elimination of consumer choice. The agency must ''weigh the benefits to the nation of a higher fuel economy standard against the difficulties of individual automobile manufacturers.'' *CAS*, 793 F.2d at 1332.

The agency has estimated not only the anticipated costs that would be borne by General Motors, Ford, DaimlerChrysler, Honda, Hyundai, Nissan and Toyota to comply with the standards under the Unreformed CAFE system, but also the significance of the societal benefits anticipated to be achieved through fuel savings and other economic benefits from reduced petroleum use. In regard to economic impacts on manufacturers and societal benefits, we have relied on the Volpe model to determine a probable range of costs and benefits.

The Volpe model was used to evaluate the standards initially produced under the Stage Analysis in order to estimate their overall economic impact as measured in terms of increases in new vehicle prices on a manufacturer-wide, industry-wide, and average per-vehicle basis. Like the Stage Analysis, the Volpe model relies on the detailed product plans submitted by manufacturers, as well as available data relating to manufacturers that had not submitted detailed information. The Volpe model is used to trace the incremental steps (and their associated costs) that a manufacturer would take toward achieving the standards initially suggested by the Stage Analysis.

Based on the Stage and Volpe analyses, we have concluded that these standards would not significantly affect employment or competition, and that—while challenging—they are achievable within the framework described above, and that they would benefit society considerably. For this analysis, we have where possible translated the benefits into dollar values and compared those values to our estimated costs for this proposed rule.

1. Costs

In order to comply with the proposed Unreformed CAFE standards, we estimate the average incremental cost per vehicle to be $56 for MY 2008, $130 for MY 2009, and $185 for MY 2010. The total incremental cost (the cost necessary to bring the corporate average fuel economy for light trucks from 22.2 mpg (the standard for MY 2007) to the proposed standards) is estimated to be $528 million for MY 2008, $1,244 million for MY 2009, and $1,798 million for MY 2010.

Our cost estimates for the proposed standards under the Unreformed CAFE system were based on the application of technologies and the resulting costs to individual manufacturers. We assumed that manufacturers would apply technologies on a cost-effectiveness basis (as described above). More specifically, within the range of values anticipated for each technology, we selected the most plausible cost impacts and fuel consumption impacts during the model years under consideration.

Using the estimated costs and fuel savings for the different technologies, the agency then examined the projections provided by different manufacturers for their light truck fleet fuel economy for MYs 2008–2010. Although the details of the projections by individual manufacturers are confidential, present fuel economy performance indicates that some manufacturers would, if their planned fleets remain unchanged, be able to meet the proposed standards without significant expenditures. Other manufacturers would need to expend significantly more effort than that called for in their product plans to meet the proposed standards.

Some manufacturers might achieve more fuel savings than others using similar technologies on a vehicle-by-vehicle basis due to differences in vehicle weight and other technologies present. However, this analysis assumes an equal impact from specific technologies for all manufacturers and vehicles. The technologies were ranked based on the cost per percentage point improvement in fuel consumption and applied where available to each manufacturer's fleet in their order of rank. The complete list of the technologies and the agency's estimates of cost and associated fuel savings can be found in the PRIA.

The level of additional expenditure necessary beyond already planned investment varies for each individual manufacturer. We based expenditures on cost estimates we developed for various technologies that are both available to and technologically feasible for manufacturers within the time frame covered by this NPRM.

Our cost analysis recognizes the importance of the competitive market. We believe that the standards proposed under the Unreformed CAFE system will not limit the availability of vehicles that consumers need and want. We believe that the standards established in this final rule will not result in noticeable changes to power-to-weight ratios, towing capacity or cargo and passenger hauling ability. In short, the standards will not affect the utility of available vehicles and therefore should not conflict with consumer preferences.

2. Benefits

In the PRIA, the agency analyzes the economic and environmental benefits of the proposed Unreformed CAFE standards by estimating fuel savings over the lifetime of each model year (approximately 26 years). Benefit estimates include both the benefits to consumers in terms of reduced fuel use and other savings such as the reduced externalities generated by the importing, refining and consuming of petroleum products.

The benefits of the proposed increases in the Unreformed CAFE standards are estimated to be $64 per vehicle for MY 2008, $142 per vehicle for MY 2009, and $206 per vehicle for MY 2010. The total value of these benefits is estimated to be $605 million for MY 2008, $1,366 million for MY 2009 and $2,007 million for MY 2010, based on fuel prices ranging from $1.51 to $1.58 per gallon. (See the discussion of current fuel prices vs. the fuel prices during the lifetime of the MY 2008–2010 light trucks in section II.J. Recent developments, above.)

3. Comparison of estimated costs to estimated benefits

Table 2 compares the incremental costs and benefits for the Unreformed CAFE standards.

TABLE 2.—COMPARISON OF INCREMENTAL COSTS AND BENEFITS FOR THE PROPOSED UNREFORMED CAFE STANDARDS
(In millions)

	MY 2008	MY 2009	MY 2010
Total incremental costs*	$528	$1,244	$1,798
Total incremental benefits*	$605	$1,366	$2,007

* Relative to the 22.2 mpg standard for MY 2007.

These estimates are provided as present values determined by applying a 7 percent discount rate to the future impacts. In the PRIA, we also use a 3 percent discount rate for discounting benefits and costs, and request comment on what discount rates are appropriate for this rulemaking, including 3, 7, and 10 percent (see Section VIII in the PRIA for a more detailed discussion). To the extent possible, we translated impacts other than direct fuel savings into dollar values and then factored them into our cumulative estimates. We obtained forecasts of light truck sales for future years from AEO2005. Based on these forecasts, NHTSA estimated that approximately 9,480,200 light trucks would be sold in MY 2008. For MYs 2009 and 2010, we estimated 9,613,100 and 9,754,000 light truck sales, respectively.

We calculated the reduced fuel consumption of MY 2008–2010 light trucks by comparing their consumption under the proposed standards for those years to the consumption they would have if the MY 2007 CAFE standard of 22.2 mpg remained in effect during those years. First, the estimated fuel consumption of MY 2008–2010 light trucks was determined by dividing the total number of miles driven during the vehicles' remaining lifetime by the fuel economy level they were projected to achieve under the 22.2 mpg standard.

Then, we assumed that if these same light trucks were produced to comply with higher CAFE standards for those years, their total fuel consumption during each future calendar year would equal the total number of miles driven (including the increased number of miles driven because of the ''rebound effect,'' the tendency of drivers to respond to increases in fuel economy in the same manner as they respond to decreases in fuel prices, *i.e.*, by driving more),[36] divided by the higher fuel economy they would achieve as a result of that standard. The fuel savings during each future year that would result from the higher CAFE standard is the difference between each model year's fuel use and the fuel use that would occur if the MY 2007 standard remained in effect. This analysis results in estimated lifetime fuel savings of 0.8 billion, 1.9 billion, and 2.7 billion gallons for MYs 2008, 2009, and 2010, respectively.

Finally, we assessed the present value of each year's fuel savings by multiplying the total number of gallons saved by the forecast fuel prices for that year and applying a 7 percent discount rate. (As noted above, we also used a 3 percent discount rate in the PRIA.) Fuel price forecasts were obtained from EIA's Annual Energy Outlook 2005 and adjusted to exclude state and local taxes. This analysis resulted in values for estimated lifetime fuel savings of $938 million, $2,114 million, and $3,092 million under the proposed Unreformed CAFE standards for MY 2008, 2009, and 2010, respectively, based on fuel prices ranging from $1.51 to $1.58 per gallon.

In the PRIA, we also analyze other effects of the proposed standards, *e.g.*, the impact on vehicle and refinery emissions, gasoline tanker truck emissions, and the rebound effect. Our analysis indicates that the MY 2008 standard would result in a net reduction of criteria pollutants with a present value of $15.5 million. For MY 2009, this net reduction would have a present value of $34.8 million and for MY 2010 the net reduction of criteria pollutants would have a present value of $52.1 million. We calculate per mile emission rates using EPA's Mobile 6.2 motor vehicle emissions factor model, and monetized changes in total emission levels for criteria pollutants associated with gasoline production, distribution, and combustion.[37] We also discuss non-monetized effects.

A more detailed explanation of our analysis is provided in the PRIA and the draft Environmental Assessment.

4. Uncertainty

The agency recognizes that science does not permit precise estimates of benefits and costs. NHTSA performed a probabilistic uncertainty analysis to examine the degree of uncertainty in the costs and benefits. Factors examined included technology costs, technology effectiveness in improving fuel economy, fuel prices, the value of oil import externalities, and the rebound effect. This analysis employed Monte Carlo simulation techniques to examine the range of possible variation in these factors. The analysis indicates that the agency is highly certain that the social benefits of the proposed CAFE levels will exceed their costs for all 3 model years of Unreformed standards included in the proposal.

We solicit comment on whether proposed levels of maximum feasible CAFE reflect an appropriate balancing of the statutory and other relevant factors. Based on those comments and other information, including additional data and analysis, the standards adopted in the final rule could well be different.

IV. The Reformed CAFE Proposal for MYs 2008–2011

We are proposing to establish Reformed standards for MYs 2008–2011. As noted above, manufacturers would have a choice of complying with either Unreformed standards or Reformed standards during the transition period spanning MYs 2008–2010. The transition process should assist the agency in learning about the industry's experiences with Reformed CAFE and determining the best approach in future rulemakings.

A. Proposed Approach to Reform

The structure of Reformed CAFE for each model year would have three basic elements—

(1)—Six footprint[38] categories of vehicles.

(2)—A target level of average fuel economy for each footprint category, as expressed by a step function. (The step or ''staircase'' nature of the function can be seen in Figure 2 below.)

[36] As described in detail in the PRIA, we use a 20% rebound effect based on a thorough review of the literature. We are nonetheless aware that there is ongoing research in this area, and will continue to assess this assumption in light of new evidence.

[37] The criteria pollutants used for the agency's analysis are carbon monoxide, volatile organic compounds, nitrogen oxides, fine particulate matter, and sulfur dioxide. Tailpipe emissions from light trucks are predicted to increase under this rulemaking due to the rebound effect, while emissions from refineries and gasoline tanker trucks are predicted to decrease due to a reduction in gasoline consumption.

[38] Footprint is an aspect of vehicle size—the product of multiplying a vehicle's wheelbase by its average track width.

(3)—a Reformed CAFE standard based on the harmonic production-weighted average of the fuel economy targets for each category.

The required level of CAFE for a particular manufacturer for a model year would be calculated after inserting the following data into the standard for that model year: That manufacturer's actual total production and its production in each footprint category for that model year.[39] The calculation of the required level would be made by dividing the manufacturer's total production for the model year by the sum of the six fractions (one for each category) obtained by dividing the manufacturer's production in a category by the category's target.

1. Distribution into footprint categories

Initially, the agency has made a preliminary determination to place light trucks up to 8,500 lbs. GVWR into six categories based on vehicle footprint. As discussed more fully below, the agency chose vehicle footprint as the best potential attribute to use as the basis of a Reformed CAFE program because it is an attribute which would best assure consistency in vehicle design and structure between model years, is consistent with our safety concerns, and may encourage the development and availability of light-weight materials whose use might advance fuel economy and preserve or maybe even enhance safety.

The six categories were defined after placing planned light truck production onto a distribution plot by footprint. We then sought to place the category boundaries generally at points indicating low volume immediately to the left and high volume immediately to the right. Our intent in doing so was to avoid providing an incentive to increase vehicle size in order to move a model into a category with a lower target. We sought to create a reasonable number of categories that would also combine, to the extent practicable, similar vehicle types into the same category structures.[40]

Our preliminary assessment of the categories is based on the product plan information available to us when devising this proposal. These categories may change based upon our review of updated product plans received in response to this NPRM.

Figure 1 provides the distribution of projected MY 2008–2010 aggregate sales for the industry:

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[39] Since the calculation of a manufacturer's required level of average fuel economy for a particular model year would require knowing the final production figures for that model year, the final formal calculation of that level would not occur until after those figures are submitted by the manufacturer to EPA. That submission would not, of course, be made until after the end of that model year.

[40] Our effort to do so explains why the boundary between categories 4 and 5 is between integers. The agency chose a non-integer boundary for this boundary because, in doing so, it kept vehicles with the same nameplate and utility within the same grouping.

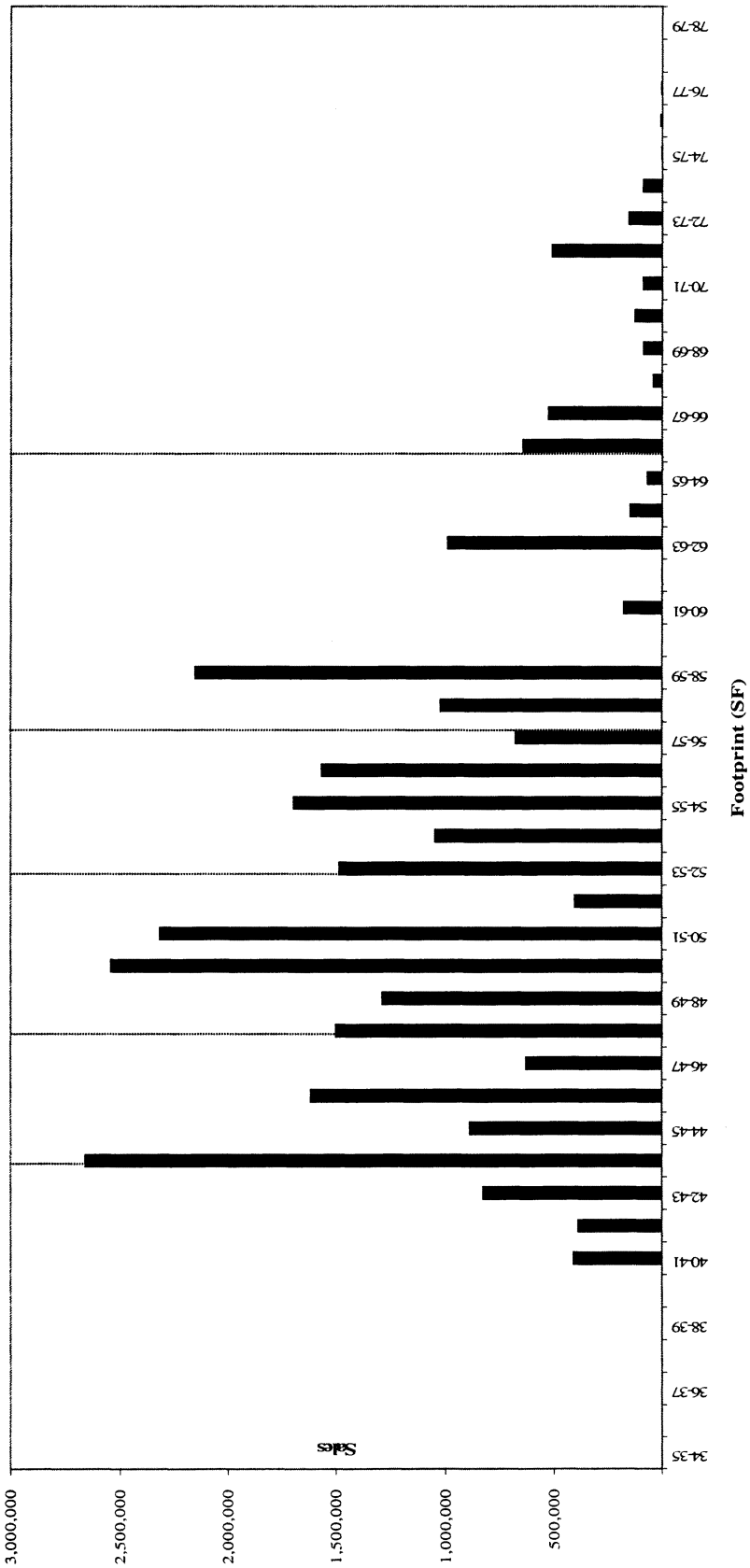

Figure 1 – MY 2008-2010 projected sales distribution vs. footprint

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In determining the number and location of categories, the agency used its best judgment applying the considerations set forth above. The agency has made the preliminary determination to establish 6 categories for purposes of this rulemaking, based on vehicle footprint, as shown in Table 2:

TABLE 2.—PROPOSED FOOTPRINT CATEGORIES

Footprint categories	1	2	3	4	5	6
Range of vehicle footprint (sq. ft.)	≤43.0	>43.0–47.0	>47.0–52.0	>52.0–56.5	>56.5–65.0	>65.0

In future rulemakings, the agency may adjust the footprint categories if necessary to better represent the fleets projected for the model years covered.

2. Targets

For each of MYs 2008–2011, the agency established a target average fuel economy level for each of the six footprint categories. The CAFE standard would be the harmonic production-weighted average of those targets. Thus, the average fuel economy of a manufacturer's vehicles in any particular footprint category need not meet the target for that footprint category. However, to the extent a manufacturer's vehicles fall short of the target in any footprint category, that shortfall would need to be offset by exceeding the target in one or more other footprint categories.

a. Overview of target selection process

We used a three-phase process for determining targets that represent the social optimum for the manufacturers as a group:

In phase one, we applied technologies to the fleet of each of the seven largest manufacturers individually until we reached the point at which the marginal cost of adding technology equaled the marginal benefit of that technology for that manufacturer. We then placed the modified fleets into the categories.[41]

In phase two, for each category, we determined the position of the targets relative to each other and a temporary level of the targets by calculating the average CAFE of those of the seven largest manufacturers that had vehicles in that category.

In phase three, we determined the proposed level of the targets by simultaneously adjusting all of the targets upward or downward by a uniform increment of fuel consumption until we reached the level at which the marginal cost of adding technology to meet that level equaled the marginal benefit of that technology for the seven largest manufacturers, as a group.

This process for determining targets was based on the application of technology under the Volpe model. Unlike the Unreformed CAFE system, the Stage Analysis was not used.

b. Industry-wide considerations in selecting the targets

An Unreformed CAFE standard specifies a ''one size fits all'' (uniform) level of CAFE that applies to each manufacturer and is set with particular regard to the lowest projected level of CAFE among the manufacturers that have a significant share of the market. The manufacturer with the lowest projected CAFE level has typically been referred to as the ''least capable'' manufacturer.

As noted above, in selecting the Reformed CAFE targets, we looked at the seven largest manufacturers, instead of focusing primarily on the least capable manufacturer, because under Reformed CAFE, it is unnecessary to set standards with particular regard to the capabilities of a single manufacturer in order to ensure that the standards are technologically feasible and economically practicable for all manufacturers with a significant share of the market. This is true both fleet wide and within any individual category of vehicles.

We note that the term ''least capable'' manufacturer is something of a misnomer since a manufacturer's projected level of CAFE is determined by two factors: the extent to which small or large vehicles predominate in the manufacturer's planned production mix, and the type and amount of fuel saving technologies that the manufacturer is deemed capable of applying. Two manufacturers may apply the same type and amount of fuel saving technologies to their fleets, yet have differing CAFE levels, if the proportions of small vehicles and large vehicles in each manufacturer's fleet are not identical. Thus, a full line manufacturer may have a lower overall CAFE than a manufacturer concentrating its production in the smaller footprint categories, even though the former manufacturer has applied as much (or more) technology as the latter manufacturer.

We have set the Unreformed standards with particular regard to the ''least capable'' manufacturer in response to the direction in the conference report on the CAFE statute language to consider industry-wide considerations, but not necessarily base the standards on the manufacturer with the greatest compliance difficulties. By focusing primarily on the least capable manufacturer with a significant share of the market, this approach has ensured that the standards are technologically feasible and economically practicable for all or most of the manufacturers with a significant share of the market. If a standard is technologically feasible and economically practicable for the ''least capable'' manufacturer, it can be presumed to be so for the ''more capable'' manufacturers. Together, the manufacturers with a significant share of the market represented a very substantial majority of the light trucks manufactured and thus were deemed to represent ''industry-wide considerations.''

However, this approach limits the amount of fuel saving possible under Unreformed CAFE. In the Unreformed system, the agency is constrained by the least capable manufacturer to a much larger degree than in the Reformed system. Since the Unreformed system is a uniform, one-size-fits-all standard, the least capable manufacturer is the one that specializes primarily in larger light trucks. Even though these vehicles may be efficient, they have low fuel economy. The Unreformed standard is set relative to the baseline fuel economy of the least capable manufacturer. This means that other manufacturers making smaller vehicles are not required to make improvements in order to comply because their vehicles get higher fuel economy yet may not be very efficient. The Reformed system takes manufacturer fleet mix into account and requires everyone to improve fuel economy by mandating similar levels of efficiency.

There is only one way under Unreformed CAFE of requiring the ''more capable'' manufacturers with a significant share of the market, *i.e.*, those with projected levels of CAFE higher than the level projected for the ''least capable'' manufacturer, to apply more fuel saving technologies than they

[41] The seven manufacturers are General Motors, Ford, DaimlerChrysler, Toyota, Honda, Hyundai and Nissan. We did not include four additional manufacturers that sell light trucks—Volkswagen, BMW, Porsche and Subaru—because the first three historically have paid civil penalties in lieu of selling a compliant fleet of light trucks and Subaru's market share is considerably smaller than any other company in this market. Together, the seven largest manufacturers account for approximately 95 percent of the market.

Looking at each manufacturer in this group of manufacturers, instead of just the least capable manufacturer as under Unreformed CAFE, provides us with a much fuller, more robust, and representative, understanding and estimate of industry-wide capabilities.

were already planning to apply. That way would be for the agency to set a standard above the capabilities of the ''least capable'' manufacturer.

There is no need under Reformed CAFE to set the standards with particular regard to the capabilities of the ''least capable'' manufacturer. Indeed, it would often be difficult to identify which manufacturer should be deemed the ''least capable'' manufacturer under Reformed CAFE. The ''least capable'' manufacturer approach was simply a way of implementing the guidance in the conference report in the specific context of Unreformed CAFE.

This proposal would change the context. The very structure of Reformed CAFE standards makes it unnecessary to continue to use that particular approach in order to be responsive to guidance in the conference report. Instead of specifying a common level of CAFE, a Reformed CAFE standard specifies a variable level of CAFE that varies based on the production mix of each manufacturer. By basing the level required for an individual manufacturer on that manufacturer's own mix, a Reformed CAFE standard in effect recognizes and accommodates differences in production mix between full- and part-line manufacturers, and between manufacturers that concentrate on small vehicles and those that concentrate on large ones.

There is an additional reason for ceasing to use the ''least capable'' manufacturer approach. There would be relatively limited added fuel savings under Reformed CAFE if we continued to use the ''least capable'' manufacturer approach even though there ceased to be a need to use it. (This reasoning is very similar to the reasoning the agency used under Unreformed CAFE when we rejected the suggestion by Mercedes Benz that we should set the standards at the level achievable by very small manufacturers.[42] In rejecting that suggestion, we cited the language from the conference report about considering industry-wide considerations and not basing the standards on the manufacturer with the greatest difficulties.)

c. Relative position of the targets

The first phase in determining the footprint category targets was to determine separately for *each* manufacturer the overall level of CAFE that would maximize the net benefits for that manufacturer's vehicles.

In this phase, as noted above, we considered the fleet of each of the seven largest manufacturers without respect to specific footprint category to which each of their vehicles is assigned. To find the socially optimal point for each of these seven manufacturers, *i.e.*, the point at which the incremental or marginal change in costs equals the incremental or marginal change in benefits for that manufacturer, we used the Volpe model to compute the total costs and total benefits of exceeding the baseline[43] CAFE by progressively larger increments. We began by exceeding the baseline by 0.1 mpg. We then used the model to calculate the total costs and total benefits of exceeding the baseline by 0.2 mpg. The marginal costs and benefits were then computed as the difference between the total costs and total benefits resulting from exceeding the baseline by 0.1 mpg and the total costs and benefits resulting from exceeding the baseline by 0.2 mpg. We then used the Volpe model to calculate the total costs and total benefits of exceeding the baseline by 0.3 mpg and computed the difference between the total costs and benefits between 0.2 mpg and 0.3 mpg to determine the marginal costs and benefits.

We continued making similar iterations until marginal costs equaled marginal benefits for that manufacturer. Performing this iterative process individually for each manufacturer pushed each of the seven largest manufacturers to a point at which net benefits are maximized for each manufacturer's vehicles.

In the second phase, we took the results of phase one, *i.e.*, each manufacturer's vehicles as modified by the technologies added to them in that phase, and placed the vehicles into the categories based on their footprints. Then, for each category, we determined the average fuel economy of each of the largest seven manufacturers that had vehicles in that footprint category. We then calculated a single harmonic mean for each footprint category based on the average fuel economy of each of the manufacturers selling vehicles in that footprint category.

The level of the single harmonic average or temporary target for each footprint category relative to the levels of the temporary targets for the other footprint categories defines the ''shape'' of the function on which the standard is based. The shape remains unchanged throughout the equal increment adjustments in phase three below since the absolute differences (on a gallon per mile basis) between the targets are unaffected by those adjustments.

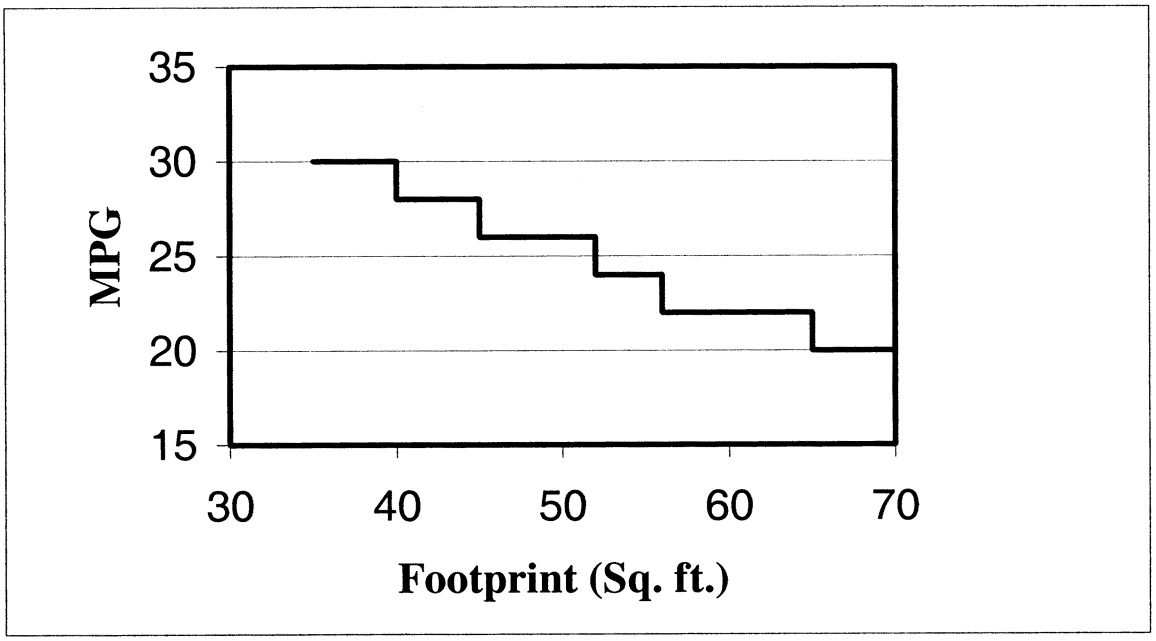
Figure 2 provides an illustrative example. The figure depicts a step or ''staircase'' function that steps down, left to right, from the highest target (for the footprint category with the vehicles having the smallest footprints, *i.e.*, footprint category 1) to the lowest target (for the footprint category with the vehicles having the largest footprints, *i.e.*, footprint category 6).[44] For any value of footprint within the range of footprints included in a particular category, the fuel economy target is the same.

[42] 61 FR 145, 154; January 3, 1996.

[43] An important distinction needs to be made between the baseline and the manufacturer's product plan mpg. As discussed earlier, ''baseline'' is defined as the fuel economy that would exist absent of the rulemaking, *i.e.*, the model year 2007 standard of 22.2 mpg. The 22.2 mpg baseline differs from the mpg level reported in a manufacturer's product plan. Some manufacturers report fuel economy levels that are below 22.2 mpg. In that case, the cost and benefits of going from the product plan mpg to the baseline (22.2) mpg are not counted as costs and benefits of the rulemaking, as they were already counted in the MY 2005–2007 final rule. Only costs and benefits associated with going from baseline mpg to a higher standard are counted. It is important to note that since technology is applied on a cost effective basis, the most cost effective technologies will be used to get a manufacturer from the product plan mpg to the baseline mpg.

[44] Although the height of each step in the hypothetical shown in the figure is identical, it is unlikely that any two steps would be identical in height.

Figure 2—Illustration of the "shape" of the step function



d. Level of the targets

For each model year after the transition period of MYs 2008–2010, *i.e.*, beginning with MY 2011, the third phase involves determining the level of the CAFE targets (and thus the level of the standard) that would require the economically efficient amount of effort by the seven largest manufacturers, as a group, to improve fuel economy. The process for determining the targets that require that amount of overall effort resembles, but is not identical to the process used in phase one for determining the optimum levels of each individual manufacturer.

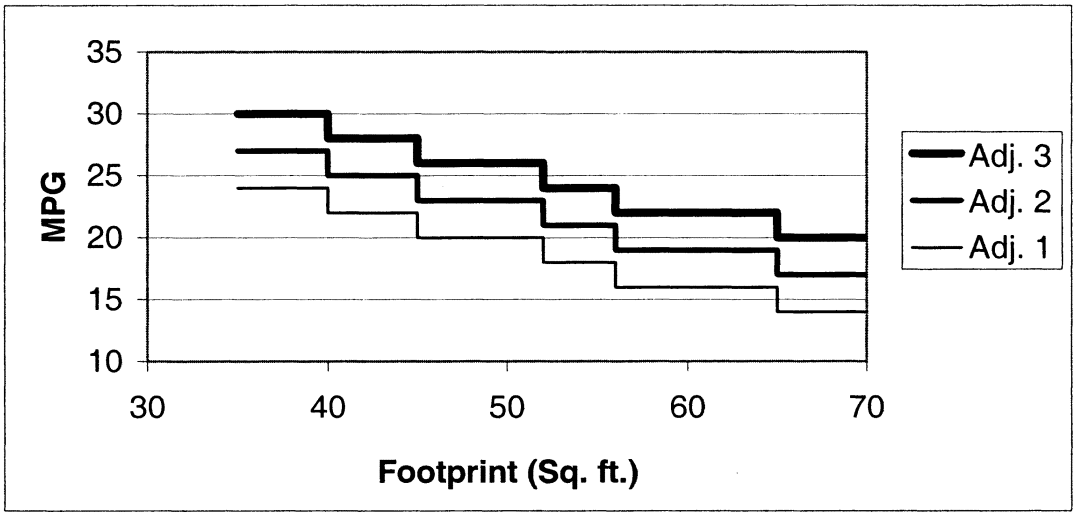
This third phase of adjustment is necessary because while the economically efficient level of CAFE for each individual manufacturer was determined in phase one, the calculation in phase two of the category averages of those manufacturer-specific levels does not necessarily result in values that correspond to the optimized level of effort for the entire industry, as represented by the seven largest manufacturers, as a group. To ensure that the step function is placed at the level that results in a standard that is optimal for the seven largest manufacturers, as a group, phase three involves the computation of total and marginal costs and benefits across the entire industry (using the combination of the largest seven manufacturers as a proxy for the entire industry), instead of manufacturer by manufacturer.

We begin phase three where we began phase one, *i.e.,* with each manufacturer's baseline CAFE derived, where available, from its product plans. For MY 2011, we used the same baselines as we did for MY 2010, except for manufacturers for which we had MY 2011 product plans from the manufacturer and thus had a MY 2011 baseline. After converting each temporary target (determined in phase two) from miles per gallon to gallons per mile so that we could adjust the footprint category targets by a uniform increment of fuel savings,[45] we adjusted all six targets by an equal increment and then converted them back to miles per gallon. We adjusted each category target by an equal increment so that the final category target remained relatively close to each manufacturer's individual optimal level in that category (*i.e.,* the manufacturer-specific levels determined in the first phase).

The direction of these adjustments can be either upward or downward, depending on the marginal costs and benefits. An example of the process of adjusting the targets, while maintaining the shape of the step function, is illustrated in Figure 3:

[45] The relationship between miles per gallon and fuel savings is not linear. An increase from 20 mpg to 21 mpg results in a greater fuel savings than an increase from 30 mpg to 31 mpg. Conversely, the relationship between gallons per mile and fuel savings is linear. A change from 0.10 gallons per mile to 0.09 gallons per mile provides the same fuel savings as going from 0.20 gallons per mile to 0.19 gallons per mile.

Figure 3 – Hypothetical illustration of successive adjustments of targets in Phase 3



Using the Volpe model, we applied to each manufacturer's baseline the technologies necessary for that manufacturer to reach the adjusted targets. Based on each manufacturer's baseline, we then calculated total costs and benefits for each manufacturer. Then we added the costs for each of the seven manufacturers together. Likewise, we added the benefits together.

We then adjusted each target a second time by the same increment. Again we added the technologies to the baselines and again calculated the total costs and benefits for the seven manufacturers. Then we compared those totals (for the seven manufacturers) for the second adjusted level to the totals for reaching the first adjusted level, yielding the marginal costs and benefits of the adjustment. After each additional adjustment in the targets, we determined marginal costs and benefits. We stopped adjusting the targets when we reached the point where marginal costs equaled marginal benefits for the industry as a whole. This is the point at which industry-wide net benefits are maximized. The required levels of CAFE that are determined for each manufacturer based on this final adjustment of targets in phase three differ from the levels of CAFE determined for each individual manufacturer in phase one. The difference ranges from 1.2 mpg higher for one manufacturer to 0.8 mpg lower for another manufacturer.

We are proposing this approach because we believe it can achieve the maximum level of technologically feasible and economically practicable fuel savings. We recognize that we are premising our preliminary assessment of economic practicability on finding the level of optimal economic efficiency. We also recognize that the agency in the past has expressed its belief that the statutory consideration of economic practicability differs from, but does not preclude consideration of, cost/benefit analysis. (See, *e.g.*, June 30, 1977; 42 FR 33534, at 33536–7)

We note, however, that the cost/benefit analyses conducted today (especially in light of the more recent addition of an uncertainty analysis required by OMB Circular A–4) are substantially more robust than those conducted in decades past and provide a more substantial basis for consideration of economic practicability. We also believe that the structure of the proposed Reformed CAFE standard, which respects the mix the manufacturer is able to sell, but demands reasonable fuel economy increases for all vehicle sizes, reduces the need to focus on more company-specific and short-term economic considerations because it provides more flexibility for the CAFE program to respond to changing economic and market conditions.

We note further that the regulatory philosophy set forth in Executive Order 12866, ''Regulatory Planning and Review,'' is that a rulemaking agency should set its regulatory requirements at the level that maximizes net benefits unless its statute prohibits doing so. EPCA neither requires nor prohibits the setting of standards at the level at which net benefits are maximized.

The agency did identify and consider a variety of benefits and costs that could not be monetized. On the benefit side, for example, there is a significant reduction in carbon dioxide emissions. On the cost side, for example, there is a risk of adverse safety impacts from downweighting. Overall, the agency determined that there is no compelling evidence that these unmonetized benefits and costs would, taken together, alter its assessment of the level of the standard for MY 2011 that would maximize net benefits. Thus, the agency determined the stringency of that standard on the basis of monetized net benefits.

EPCA does, however, require that the maximum feasible level be determined after considering economic practicability. Thus, it is possible that, under certain circumstances, NHTSA might be required to set CAFE standards below the level at which net benefits are maximized if considerations of economic practicability make it necessary or prudent to set standards at a lower level. The agency seeks comment on the advisability and potential form of any supplementary methodological approach—beyond economic efficiency—to ensuring that Reformed CAFE standards are set at the level capable of achieving the maximum feasible fuel savings, as determined after consideration of the statutory and other relevant factors.

MYs 2008–2010. In each of the transition years, we did not adjust the targets to the optimal level. Instead, we adjusted the footprint category targets in equal increments until the total industry costs under the Reformed program approximately equaled the total industry costs under the Unreformed program. Cost equalization has several important advantages. Since the Unreformed standards were judged to be economically practicable and since the

Reformed standards spread the cost burden across the industry to a greater extent, equalizing the costs between the two systems ensures that the Reformed standards are within the realm of economic practicability.[46] Also, cost equalization promotes an orderly and effective transition to the Reformed system by minimizing the cost differences between the two choices.

3. Standards and required CAFE levels for individual manufacturers

The Reformed CAFE standard is an equation for calculating production-weighted, harmonically-averaged fuel economy in which the footprint category targets are constants, total production and footprint category production are variables, and the required level of CAFE must be solved. The equation is separately solved for each individual manufacturer, using its total production and its production in each footprint category. The solution or answer is the manufacturer's required level of CAFE.[47]

The required level of CAFE for a manufacturer for a model year would be the production-weighted harmonic average fuel economy of that manufacturer's entire product line for that model year, as determined by inserting the manufacturer's total production and production in each footprint category into the formula. Each manufacturer would be subject to the same fuel economy targets for the same footprint categories and all manufacturers would be required to meet the level of CAFE calculated for it under the same formula. Individual manufacturers would face different required levels of CAFE only to the extent that they produced different mixes of vehicle models. In this respect, the proposal would be no different than if the agency established multiple classes. Under a multiple class system, manufacturers would implicitly have different requirements at the fleet level as a result of differences in their fleet mixes.

The required level would then be compared to the production-weighted harmonic average fuel economy of a manufacturer's entire product line, based on the *actual* fuel economy levels achieved by each model line. If the value based on the actual fuel economy levels were at least equal to the required level of average fuel economy, then a manufacturer would be in compliance. If it were greater than that level, the manufacturer would earn credits usable in any of the three preceding or following model years.

More specifically, the manner in which a manufacturer's required overall CAFE for a model year is computed is similar to the way in which a manufacturer's actual CAFE for a model year is calculated. The required level is computed on the basis of the number of vehicles in each footprint category and the footprint category targets as follows:

$$\frac{\text{Manufacturer X's Total Production of Light Trucks}}{\dfrac{\text{X's production in category 1}}{\text{Target for category 1}} + \dfrac{\text{X's production in category 2}}{\text{Target for category 2}} + \text{etc}} = \text{X's required level of CAFE}$$

This formula can be restated more compactly as follows:

Required CAFE Level =

$$N / \left\{ \sum_{i=1}^{6} \left(b_i \,/\, \text{Target}_i \right) \right\}$$

(Required CAFE level sum formula)

N is the total number (sum) of light trucks produced by a manufacturer,

b_i is the number (sum) of light trucks produced by that manufacturer in the i-th light truck footprint category, and

Target_i is fuel economy target of the i-th footprint category.

The required level is then compared to the CAFE that the manufacturer actually achieves in the model year in question:

Actual CAFE =

$$N / \left\{ \sum_{i=1}^{6} \left(b_i \,/\, \text{Target}_i \right) \right\}$$

N is the total number (sum) of light trucks produced by the manufacturer,

n_j is the number (sum) of the j-th model light trucks produced by the manufacturer,

mpg_j is the fuel economy of the j-th model light truck, and

m is the total number of light truck models produced.

A manufacturer is in compliance if the actual CAFE meets or exceeds the required CAFE.

The method of assessing compliance under Reformed CAFE can be further explained using an illustrative example of a manufacturer that produces four models in two footprint categories with targets assumed for the purposes of the example shown in Table 3:

TABLE 3.—ILLUSTRATIVE EXAMPLE OF METHOD OF ASSESSING COMPLIANCE UNDER A STEP FUNCTION APPROACH

Model	Fuel economy (mpg)	Production (units)	Footprint (sq. ft.)	Footprint category	Footprint category target (mpg)
A	27	100,000	43	1	27.3
B	24	100,000	42	1	27.3
C	22	100,000	52	4	22.9
D	19	100,000	54	4	22.9

[46] We equalized aggregate industry costs between Reformed and Unreformed CAFE. The costs are not borne by manufacturers in the same way and costs for individual manufacturers may differ between the two systems.

[47] In response to the agency's December 1979 proposal of light truck standards for model years 1983–85, the Regulatory Analysis Review Group (RARG) suggested a similar approach in March 1980: ''setting fuel economy targets for different categories of trucks, and using a pre-determined fleet mix for each manufacturer to turn these targets into a composite standard.'' See Report of the Regulatory Analysis Review Group, Council on Wage and Price Stability, March 31, 1980, submitted as attachment to letter from R. Robert Russell, Director of the Council, to Joan Claybrook, Administrator, NHTSA (FE–78–01–N01–175). The RARG was established by President Carter to review up to 10 of the most important regulations each year classified as significant under Executive Order 12044. It was chaired by the Council of Economic Advisors (CEA) and was composed of representatives of OMB and the economic and regulatory agencies. It relied on the staff of Council on Wage and Price Stability and the CEA to develop evaluations of agency regulations and the associated economic analyses and to place these analyses in the public record of the agency proposing to issue the regulation.

Under Reformed CAFE, the manufacturer would be required to achieve an average fuel economy level of:

$$N / \left\{ \sum_{j=1}^{m} \left(n_j / mpg_j \right) \right\}$$

This fuel economy figure would be compared with the manufacturer's actual CAFE for its entire fleet, *i.e.*, the production-weighted harmonic mean fuel economy level for four models in its fleet:

$$\text{Actual CAFE} = \frac{400{,}000}{\frac{100{,}000}{27.0\ \text{mpg}} + \frac{100{,}000}{24.0\ \text{mpg}} + \frac{100{,}000}{22.0\ \text{mpg}} + \frac{100{,}000}{19.0\ \text{mpg}}} = 22.6\ \text{mpg}$$

In the illustrative example, the manufacturer's actual CAFE (22.6 mpg) is less than the required level (24.9 mpg), indicating that the manufacturer is not in compliance.

4. Why this approach to reform and not another?

a. Step-function vs. continuous function

While manufacturers generally recognized the potential advantages of an attribute-based system, several commenters (including manufacturers) on the 2003 ANPRM stated that a continuous function based on one or more vehicle attributes would be preferable to a multi-class attribute-based system. Commenters stated that a system based on a continuous function would remove the ''edge effects'' [48] associated with a multi-class system, that determination of the maximum feasible standard for a continuous function would prove simpler than determining maximum feasible standards for a series of classes, and that a continuous function could be structured to eliminate concern regarding the agency's authority to permit credit transfer between classes.[49]

The continuous function approach uses a statistically estimated relationship between vehicle size and fuel economy to determine the overall required level for each manufacturer. Compliance is calculated in virtually the same manner. In the step-function approach, the denominator of the required overall target is the sum of the number of vehicles in each category divided by the required fuel economy of the category. In the continuous function approach, the denominator of the required overall target is the sum of the number of vehicle models divided by the required fuel economy for that model derived from the function.

Figure 4 shows an illustrative example of a continuous function.

[48] In the context of products placed in a multi-category or multi-class system for regulatory purposes, the term ''edge effects'' refers to the incentive for the manufacturers of those products to modify them, particularly the ones located near the boundary of an adjacent category or class, *i.e.,* an ''edge,'' so as to move them into a different category or class where they will receive more favorable regulatory treatment.

[49] Under a continuous function based on footprint, any increase (or decrease) in footprint would result in a decrease (or increase) in the fuel economy target. Under a step function based on footprint, the fuel economy target does not change continuously in response to changes in footprint. The target would increase only at discrete points over the range of footprint. Under this proposal, the targets increase only at the boundaries between adjacent footprint categories.

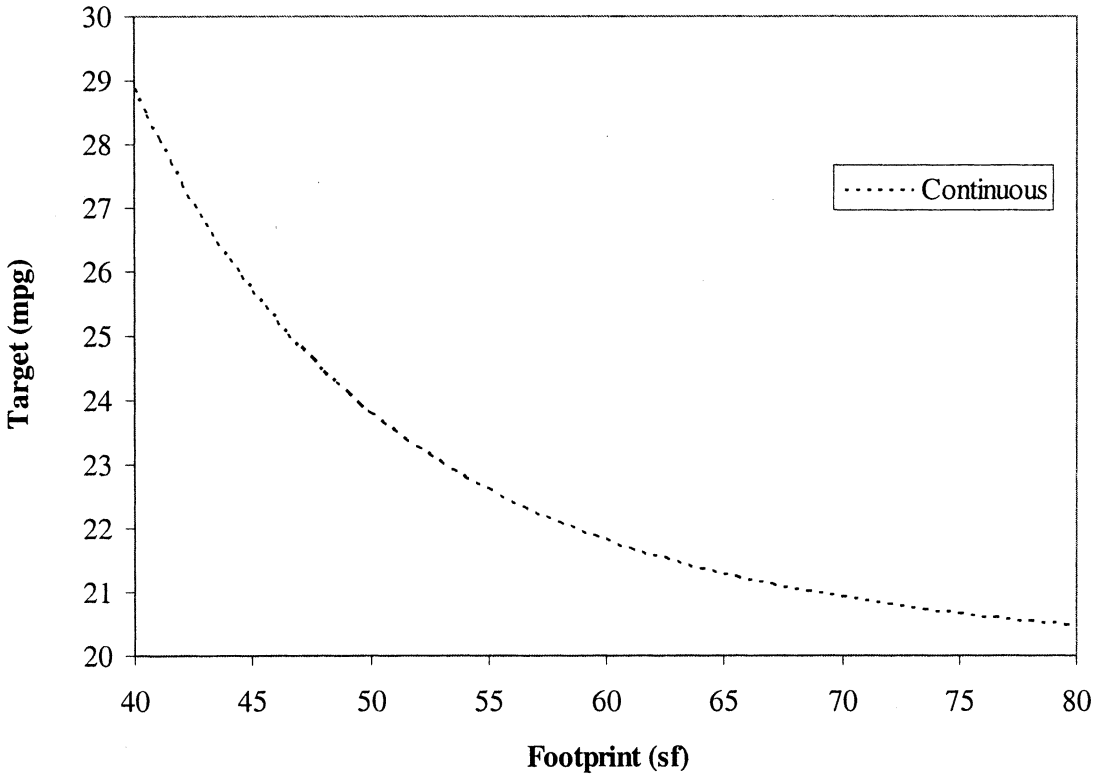


Figure 4 – Illustrative continuous function

The illustrative continuous function shown in Error! Reference source not found.4 is defined by the following mathematical function:

$$\frac{1}{\frac{1}{A} - \frac{1}{B}\exp\left(1 - \frac{FOOTPRINT}{C}\right)}$$

In the illustrative function,

A = 20.0 mpg
B = 12.9 mpg
C = 15.3 square feet

The mechanics of defining the continuous function would be similar to the procedure used to develop the proposed MY2011 standard. The iterative process described above in ''phase one'' would be used to add fuel saving technologies to the baseline technologies for each manufacturer's vehicles. Data points representing each vehicle's size and fuel economy (as improved through the phase one process) would then be plotted on a graph. Using statistical techniques, a function would then be fitted through the data to obtain the continuous function. The last step would be the same as described above in ''phase three'' for the step function, *i.e.,* the function would be adjusted (raised or lowered) until industry-wide net benefits are maximized, in the case of MY 2011, or until industry-wide costs are equal to those of the Unreformed standards, in the case of MYs 2008–2010.

Determination of the required level of CAFE (and of compliance with that level) is accomplished under a continuous function system in exactly the same fashion as under the step function system, except that there are vehicle model-specific targets, instead of category targets. For each vehicle model, the function shown above in Figure 4 is used to define a target that depends on footprint. Examples are shown in the last column of Table 4.

TABLE 4.—ILLUSTRATIVE EXAMPLE OF METHOD OF ASSESSING COMPLIANCE UNDER A CONTINUOUS FUNCTION APPROACH

Model	Fuel Economy (mpg)	Production (units)	Footprint (sq. ft.)	Vehicle Model Specific Target (mpg)
A	27	100,000	43	26.8
B	24	100,000	42	27.4
C	22	100,000	52	23.3
D	19	100,000	54	22.8

Under Reformed CAFE using this illustrative continuous function, the manufacturer would be required to achieve a CAFE of:

$$\text{Required CAFE} = \frac{400{,}000}{\frac{100{,}000}{26.8\text{ mpg}} + \frac{100{,}000}{27.4\text{ mpg}} + \frac{100{,}000}{23.3\text{ mpg}} + \frac{100{,}000}{22.8\text{ mpg}}} = 24.9\text{ mpg}$$

The manufacturer's required CAFE would be compared with the manufacturer's actual CAFE, *i.e.,* the production-weighted harmonic mean fuel economy level for four models in its fleet:

$$\text{Actual CAFE} = \frac{400{,}000}{\frac{100{,}000}{27.0\text{ mpg}} + \frac{100{,}000}{24.0\text{ mpg}} + \frac{100{,}000}{22.0\text{ mpg}} + \frac{100{,}000}{19.0\text{ mpg}}} = 22.6\text{ mpg}$$

In the illustrative example in Figure 4, the manufacturer's actual CAFE (22.6 mpg) is less than the required level (24.9 mpg), indicating that the manufacturer is not in compliance.

A continuous function and a step function can have similar properties. As the number of steps in a step function increases, the difference between the step function and a continuous function decreases. If the number of steps becomes large enough, a graph of the step function approaches being a smooth straight or curved line. In other words, the step function approaches being a continuous function as the number of steps becomes large.

If the step function is composed of only a few categories, then the incentive to upsize may be strong because the rewards for doing so will be significant. The present car/light truck system is a good example. This is a system with basically two steps and the burden of regulatory compliance decreases if a vehicle can be designed to be classified as a light truck instead of as a passenger car.

The same is true for mix shifting. When the number of categories is large, the rewards for mix shifting are limited. This is because the difference in fuel economy targets between two adjacent categories is small and would diminish the credit that could be earned and used to subsidize vehicles in other categories. In contrast, in the Unreformed CAFE system with a single step from cars to light trucks, the rewards—in terms of CAFE compliance—for mix shifting may be significant. A small SUV can be used to subsidize a larger vehicle with lower fuel economy. In the Reformed system, the rewards of mix shifting are considerably less.

DaimlerChrysler, Ford, General Motors, Subaru, and Toyota argued that the creation of multiple classes might encourage some manufacturers to increase weight (or size) or to make other product changes not desired by the market solely to optimize compliance with the regulatory structure, resulting in edge effects. Environmental Defense stated that product offerings would concentrate at points that minimize the price of the design constraint imposed by the CAFE regulations. Manufacturers argued that, under a continuous function scheme, any change to the measured attribute would result in a vehicle being subjected to a different standard. They then stated that because each vehicle model would be subjected to a different standard, manufacturers would be limited in their ability to redesign vehicles in order to subject a vehicle to a less stringent standard. Manufacturers further stated that a continuous weight based function would allow a manufacturer to align its products more with the market.

Conversely, manufacturers stated that, as the number of classes increased under a multi-class system, the ''edge effects'' of the system would be amplified because more light trucks would be adjacent to a boundary between adjacent classes. Manufacturers argued that the likelihood of redesign in order to subject a vehicle to a less stringent standard would increase. Environmental Defense stated that even using a continuous or piecewise linear function would not completely avoid the problem of manufacturers shifting vehicles to a point with a less stringent standard to minimize compliance costs.

We note that most of the comments compared a continuous function to a simple multi-class structure approach, as opposed to the multiple-category approach we are proposing. We believe a step function is easier for the public to understand than a continuous function, and would facilitate product planning. We also believe our proposed approach minimizes the potential disadvantages articulated by the commenters. Specifically, both the number and the location of the boundaries for the footprint categories are designed to minimize any edge effects.

NHTSA remains interested in the concept of a continuous function standard. This concept was explored both by NAS in its study (chapter 5 and attachment 5A) and by NHTSA in its 2003 ANPRM on CAFE reform. Now that the agency has refined its potential approach to reforming light truck CAFE, the agency believes that would be useful to seek more detailed comments and analyses regarding the relative advantages of step function standards and continuous function standards.

b. Categories and targets vs. classes and standards

We considered an approach under which we would establish each footprint category as a separate class with its own standard. Thus, for each model year under reform, there would have been six different standards, depending upon the footprint size of the vehicle. However, there were two primary shortcomings that led us to evaluate other approaches for our Reformed CAFE.

First, transfers of credits earned in a footprint class in a model year to a different footprint class in a different model year would have required a complicated process of adjustments to ensure that fuel savings are maintained.[50] This is because credits earned under the multiple classes and standards approach would have differing energy value. Credits earned for exceeding the higher fuel economy standard for the smaller footprint vehicles would have less energy value than exceeding the lower fuel economy standard for the larger footprint vehicles by an equal increment. In fact, if credits were generated in a class with relatively high CAFE standards and transferred to another class with relatively low CAFE standards, total fuel use by all vehicles in the two classes might increase. That

[50] The 2003 ANPRM on reforming CAFE noted that the agency had previously concluded that the credits earned in one class could not be transferred to another class, but re-examined the legislative history of the CAFE statute and called that interpretation into question.

result would undermine the entire reform effort by producing lessened energy security.

One can calculate the appropriate adjustments for such a credit transfer system to ensure no loss of fuel savings. This would ensure equivalent energy savings. However, instituting a complicated new process of credit adjustments would detract from the benefits of reforming the CAFE program by making it more difficult to plan for and determine compliance. Further, taking this step would not cure another problem associated with credits. Credits earned by exceeding a standard in a model year may be used in any of the three model years preceding that model year and, to the extent not so used, in any of the three model years following that model year (49 U.S.C. 32903(a)). They may not, however, be used within the model year in which they were earned (Ibid.).

Second, establishing separate standards for each footprint category would needlessly restrict manufacturer flexibility in complying with the CAFE program. A requirement for manufacturers to comply with six separate standards, combined with the inability either to apply credits within the same model year or to average performance across the classes during a model year, could increase costs without saving fuel. This would happen by forcing the use of technologies that might not be cost-effective. Further, Congressional dialogue when considering the enactment of the EPCA and amendments to it has repeatedly expressed the view that manufacturers should have flexibility in complying with a CAFE program so that they can ensure fuel savings, while still responding to other external factors.

Our proposal avoids these shortcomings. Instead of establishing six distinct standards for each footprint category, our proposal establishes six targets and applies them through a harmonically weighted formula to derive regulatory obligations. Credits are earned and applied under our proposal in the same way as they are earned and applied under Unreformed CAFE and in a manner fully consistent with the statute. Thus, no complicated new provisions for credits are needed. Further, the use of targets instead of standards allows us to retain the benefits of a harmonically weighted fleet average for compliance. This ensures that manufacturers must provide the requisite fuel economy in their light truck fleet, while giving the manufacturers the ability to average performance across their entire fleet and thus the flexibility to provide that level of fuel economy in the most appropriate manner.

c. Footprint vs. shadow or weight

In the 2003 ANPRM, we posited the possibility of establishing classes of light trucks defined by various attributes. We focused our discussion on vehicle weight and vehicle ''shadow'' (vehicle length × width), but invited additional ideas.

Recognizing the links between weight and vehicle safety, the Alliance, Daimler Chrysler, Ford, General Motors, Toyota, and Nissan expressed a preference for using weight in an attribute-based system. They also asserted that weight appears to have the best correlation to fuel economy, and that weight is currently used in fuel economy testing. Further, a weight-based system would distribute the burden of reducing fuel consumption equally to all manufacturers, preventing the systemic downsizing of vehicles and the associated detriment to safety.

Honda and other commenters identified other benefits of a weight based system: weight based systems are less complex, have more readily available data, and are conducive to grouping all light trucks together in a single system. However, Honda stated that weight based systems have potentially severe consequences on light truck safety design, are more susceptible to erosion of fuel economy, and offer less potential for cost-effective fuel economy gains.

Other manufacturers noted the weaknesses in a weight-based system. DaimlerChrysler commented that a weight-based system would discourage investments in weight reduction for material substitution, and result in lost opportunities to improve real-world fuel economy. Volkswagen believes a weight-based system will reduce the regulatory incentive to reduce vehicle weight.

Honda considered the most constructive alternative to weight to be a length x width (shadow) attribute-based system. Honda stated that such a system would provide proper safety incentives. Honda and Rocky Mountain Institute (RMI) stated that a size-based system would likely be subject to less gaming than a weight-based system. As discussed above, Honda determined that changes in size are readily apparent to prospective buyers and change how they perceive a vehicle competitively, while weight can be changed substantially without most customers being aware of the change. Honda stated that when purchasing vehicles, customers typically consider functional characteristics that are more related to size and utility (such as passenger and hauling capacity), rather than weight. Other commenters such as Environmental Defense and Natural Resource Defense Council stated that if the agency were to pursue attribute-based system, a size-based system would be preferable to a weight-based system.

Toyota and Ford questioned the correlation between size and fuel economy. Ford stated that there is a very poor correlation, unlike the correlation with weight. Ford stated that as the mass of a vehicle increases, more energy is required to move it, which results in increased fuel consumption. However, Ford continued, the relationship between size and fuel economy is not as clear; increases in size do not necessarily require increased fuel consumption because a larger sized vehicle can have a similar weight to a smaller sized vehicle. Further, General Motors asserted that weight is the primary factor affecting safety; therefore, NHTSA should not adopt a size-based system.

The agency recognizes that size and/or weight creep are legitimate concerns about an attribute-based class system. There is the potential under such a system for manufacturers to design vehicles toward the larger or heavier categories that may have lower compliance obligations.

We have decided against premising our proposal on vehicle weight or vehicle shadow, and instead decided to premise it on vehicle footprint. We share commenters' concern that vehicle weight could be tailored more easily than size to move vehicles into heavier weight categories with lower CAFE targets. Weight could be added to a vehicle near the edge of a category with minimal impact on design or performance at relatively low cost. Similarly, vehicle shadow (in a size based system) could be tailored for the same purpose by the simple addition of bumpers or other vehicle lengthening features. As a result, both of those attributes, if used as the foundation of our program, could fail to achieve our goals of enhancing fuel economy and safety with a Reformed CAFE program.

We believe that vehicle footprint is a better vehicle attribute and an appropriate foundation for reforming the CAFE program to advance energy security and safety. Basing categories on footprint permits grouping of vehicles in similar market segments, thus avoiding grouping light trucks designed to carry large payloads or a large number of passengers together with light trucks designed to carry smaller payloads or a smaller number of passengers.

Vehicle footprint is more integral to a vehicle's design than either vehicle weight or shadow and cannot easily be altered between model years in order to move a vehicle into a different category with a lower fuel economy target. Footprint is dictated by the vehicle platform, which is typically used for a multi-year model life cycle. Short-term changes to a vehicle's platform would be expensive and difficult to accomplish without disrupting multi-year product planning. In some cases, several models share a common platform, thus adding to the cost and difficulty and therefore unlikelihood of short-term changes.

Moreover, as Honda commented, the ability to change footprint would be subject to the limits imposed by consumer acceptance and preference. Changes in footprint result in perceptible changes in performance and design (*e.g.*, a longer and/or wider vehicle). The responsiveness of consumers to those changes is pronounced, as is evidenced by the fact that manufacturers market size variant models, *e.g.*, pick-up trucks in long and short beds, and light truck models in longer wheelbase versions. Changes in footprint solely for the purpose of moving a vehicle to a footprint category with a less stringent fuel economy target could adversely impact consumer demand for that product and/or increase cost to the manufacturer. These considerations regarding footprint allow us to establish footprint category target levels and to design our Reformed CAFE program with more certainty that we can achieve our objectives.

We also believe that use of the vehicle footprint attribute helps us achieve greater fuel economy without having a potential negative impact on safety. While past analytic work [51] focused on the relationship between vehicle weight and safety, weight was understood to encompass a constellation of size-related factors, not just weight. More recent studies [52] have begun to consider whether the relationship between vehicle size and safety differs. To the extent that mass reduction has historically been associated with reductions in many other size attributes and given the construct of the current fleet, we believe that the relationship between size or weight (on the one hand) and safety (on the other) has been similar, except for rollover risks.

Developing CAFE standards based on vehicle footprint could encourage compliance strategies that would decrease rollover risk. Manufacturers would be encouraged to maintain track width because reducing it could subject the vehicle to a more stringent fuel economy target. Maintaining track width would potentially allow some degree of weight reduction without a decrease in overall safety. Moreover, by setting fuel economy targets for small footprint light trucks that approach (or exceeds) 27.5 mpg, the agency would provide little incentive, or even a disincentive, to design vehicles to be classified as light trucks in order to comply or offset the fuel economy of larger light trucks.

The influence of Reformed CAFE on track width would be reinforced by our NCAP rollover ratings. Track width is one of the elements of our Static Stability Factor, which constitutes a significant part of our NCAP rollover ratings and which correlates closely with real world rollover risk. The rollover NCAP program (as well as real world rollover risk) would reinforce Reformed CAFE by a separate disincentive to decrease track width.

Overall, use of vehicle footprint would be ''weight neutral'' and thus would not exacerbate the vehicle compatibility problem. A footprint-based system would not encourage manufacturers to add weight to move vehicles to a higher footprint category. Nor would the system penalize manufacturers for making limited weight reductions. By using vehicle footprint in lieu of a weight based metric, we intend to facilitate the use of promising lightweight materials that, although perhaps not cost-effective in mass production today, may ultimately achieve wider use in the fleet, become less expensive, and enhance both vehicle safety and fuel economy.[53] In Reformed CAFE, lightweight materials can be incorporated into vehicle design without moving a vehicle into a footprint category with a more stringent average fuel economy target.

The agency is aware that basing the Reformed CAFE proposal solely on footprint can be criticized on the grounds that it does not fully account for other vehicle attributes that are valuable to consumers and influence fuel economy. For example, vehicles A and B may have equal footprint, but vehicle A may be designed to have superior towing and/or cargo-hauling capabilities than vehicle B.[54] Vehicle A may therefore have lower fuel economy than vehicle B because it is designed to provide greater utility for consumers. For vehicle manufacturers that have a product mix weighted toward vehicles with superior towing and/or cargo-hauling capabilities, even Reformed CAFE, based on a single size attribute, may not provide a fully equitable competitive environment. The agency is seeking comment on whether Reformed CAFE should be based on vehicle size (footprint) alone, or whether other attributes, such as towing capability and/or cargo hauling capability, should be considered. If any commenters advocate one or more additional attributes, the agency requests those commenters to supply a specific, objective measure for each attribute that is accepted within the industry and that can be applied to the full range of light-truck products.

d. Reformed standard vs. Reformed standard plus backstop

Several commenters argued that a backstop would be needed under attribute-based Reformed CAFE. In the context of Reformed CAFE, NHTSA understands the term ''backstop'' to mean an absolute minimum CAFE requirement that would apply to a manufacturer's overall fleet if the level of average fuel economy otherwise required of a manufacturer under a Reformed CAFE standard fell below the level of that absolute minimum requirement. Such a requirement would essentially be the same as an Unreformed CAFE standard. Stated another way, the Reformed standard with a backstop would require

[51] *See*, Kahane (2003) and Van Auken, R.M. and J.W. Zellner, An Assessment of the Effects of Vehicle Weight on Fatality Risk in Model Year 1985–98 Passenger Cars and 1985–97 Light Trucks, Dynamic Research, Inc. February 2002. Docket No. NHTSA 2003–16318–2.

[52] *See*, Van Auken, R.M. and J.W. Zellner, *Supplemental Results on the Independent Effects of Curb Weight, Wheelbase, and Track on Fatality Risk in 1985–1997 Model Year LTVs*, Dynamic Research, Inc. May 2005. Docket No. NHTSA 2003–16318–17.

[53] The Aluminum Association commented that using aluminum to decrease a vehicle's weight by 10 percent could improve its fuel economy by 5–8 percent. The commenter noted that the Honda Insight, an all aluminum vehicle, is 40 percent lighter than a comparable steel vehicle. It also provided data to demonstrate that all aluminum vehicles have comparable performance in frontal barrier crash tests as comparable steel vehicles. *See* comments provided by the Aluminum Association, Inc. (Docket No. 2003–16128–1120, pp. 5 and 12).

[54] We noted the importance of these capabilities in the ANPRM:

The market suggests that while some light trucks may be used primarily to transport passengers, their ''peak use or value'' capability (towing boats, hauling heavy loads, etc.) may be a critical factor in the purchase decision. In other words, a consumer may require substantial towing capability only periodically, but nevertheless may base his purchasing decision on a vehicle's ability to meet that peak need rather than his daily needs. The motor vehicle market has thus developed a demand for vehicles capable of cross-servicing traditional needs—that is, for vehicles capable of transporting people and cargo, for vehicles capable of servicing personal transportation needs as well as recreational and commercial ones, and for vehicles capable of substantial performance, even if such performance is only needed periodically.

68 FR 74908, at 74913.

compliance with the greater of the following fleet wide requirements: average fuel economy level calculated under Reformed standard or an equal cost Unreformed CAFE standard.

These commenters suggested that unless a backstop in the form of an absolute fleet wide CAFE standard were established to supplement attribute-based Reformed CAFE standards based on size or weight, there might be an overall loss in fleet economy resulting from mix shifts or from upward weight or size ''creep.'' For example, manufacturers might redesign some of their vehicles to make them larger or heavier or they might shift their production mix so as to increase their production of vehicles subject to less stringent standards).

Environmental groups such as the NRDC and Environmental Defense urged the agency to adopt a backstop as a part of any proposed reform. These commenters suggested that a backstop would provide a guarantee against any loss of fuel economy due to increase in vehicle weight or size.

While some vehicle manufacturers noted some commenters were likely to suggest that a backstop might be needed to prevent erosion of overall fuel economy, the manufacturers opposed the concept. DaimlerChrysler and General Motors stated that these commenters might argue that a backstop would be necessary to ensure no loss in overall economy. These manufacturers noted that a backstop would have disparate impacts on manufacturers because of differences in their fleet mixes, and that a backstop would lead to downweighting under a weight based system. Ford opposed a backstop, stating that the ''assumption of wholesale ''upsizing'' or ''upweighting'' ''is erroneous.'' General Motors also said that the risk of such upsizing or upweighting was overstated. Manufacturers expressed concern that a backstop would unduly increase the complexity of the CAFE program by applying essentially two different types of standards. General Motors argued that establishing separate class standards as well as a fleet wide standard would be contrary to legislative scheme established under the Energy Policy and Conservation Act in which a vehicle is placed in a single compliance fleet.

NHTSA is not proposing a backstop for the following reasons. First, manufacturers cannot increase the size or weight of their vehicles or introduce new, larger vehicles without regard to consumer demand. They can make those changes only to the extent that there is market acceptance of them. Absent a reliable indication of likely market acceptance, manufacturers would be unlikely to assume the risks involved in taking these actions. As Toyota noted, ''Manufacturers must still be cognizant of other aspects of vehicle design, such as acceleration, handling, cornering, and other factors. Adding weight would be counterproductive to many of the attributes, and thus careful consideration would be given by manufacturers before simply adding weight for no otherwise apparent reason.''

Further, NHTSA believes that given the cost and difficulty of increasing vehicle size, the agency's choice of footprint, instead of weight or shadow, as the attribute used in Reformed CAFE would significantly limit the possibility that manufacturers would increase vehicle size beyond the extent sought by consumers. Increasing vehicle footprint, like increasing vehicle weight, would require addressing the other aspects of vehicle design mentioned in Toyota's comment.

Second, establishing a backstop would not preclude future mix shifts and design changes. The comments urging the establishment of a backstop appear to be premised on a misconception of how CAFE standards have been set and adjusted over the life of the CAFE program. The Unreformed CAFE program has not sought, and does not seek, to ignore consumer demand and freeze the mix or design of vehicles. The agency has set Unreformed CAFE standards with particular regard to the least capable manufacturer's own projections about its mix and vehicle designs in the years to which the standards will apply '' adjusted according to the agency's determinations of available cost-effective, fuel-efficient technologies that could be added to that company's fleet. Thus, the standards are market based, set in a fashion that accommodates that manufacturer's judgment, adjusted by the agency for fuel economy improvements, as to how consumer demand will change between the time of a light truck CAFE rulemaking and those future model years.

Establishing a backstop would also not preclude the growth in vehicle weight as a result of the manufacturers' continued introduction of new mandatory and voluntary safety features and non-safety features that would enhance vehicle utility and consumer choice. In fact, the agency has consciously set Unreformed CAFE standards in the past so as to accommodate any anticipated installation of mandatory and voluntary safety features, as required by statute. Plans for the installation of these features and items of equipment are reflected in the manufacturers' baselines for the purpose of determining their future capability to improve fuel economy. To the extent that new safety requirements are implemented, and to the extent there is consumer demand for voluntarily installed equipment, average weight may increase further. The implementation of Reformed CAFE would not and should not change the practice of accommodating those manufacturer actions.

In addition, the proponents of the backstop concept erroneously assume that unreformed CAFE does not change when good faith compliance efforts fall short. When manufacturer plans for complying with established CAFE standards have proven insufficient because of factors outside the control of the industry, the agency has revisited both light truck and passenger car CAFE standards and adjusted them to reflect more up-to-date, corrected projections of mix. NHTSA's actions in this regard were twice reviewed and upheld by the U.S. Circuit Court of Appeals for the District of Columbia, once with respect to light trucks, and the other time with respect to passenger cars. See, *CAS*, 793 F.2d 1322; *Public Citizen*, 848 F.2d 256.

Third, the agency plans to periodically adjust the location of the boundaries between footprint categories. Since the agency is likely to adjust the boundaries each time a new round of CAFE standards is established, there would be limited advantage to a manufacturer's upsizing some of its vehicles. Further, it would be difficult for a manufacturer to predict how category boundaries might change over the four to eight year life of a vehicle design.

Fourth, the agency believes that supplementing the Reformed CAFE standards with a backstop would negate the value of establishing the attribute-based standards for some manufacturers and perpetuate the shortcomings of Unreformed CAFE. The level of the backstop would presumably be set at (or close to) the level of the manufacturer that would be determined to be the least capable manufacturer under Unreformed CAFE. Any manufacturer that, under Reformed CAFE, would have a required level of average fuel economy less than the level of the least capable manufacturer would have to comply with the backstop instead.

Fifth, and finally, making vehicles larger for CAFE compliance purposes is not cost-free. All else being equal, larger vehicles are more costly to build and operate. Market forces or fuel price increases will restrain consumer demand for large light trucks with low

fuel economy, unless the need for utility justifies the expense to the manufacturers of producing and to the consumers of operating large trucks.

5. Benefits of reform

a. Increased energy savings

The Reformed CAFE system would increase the energy savings of the CAFE program over the longer term because fuel economy technologies would be required to be applied to light trucks throughout the entire industry, not just by a limited number of manufacturers. The energy-saving potential of Unreformed CAFE is limited because only a few full-line manufacturers are required to make improvements. In effect, the capabilities of these full-line manufacturers, whose offerings include larger and heavier light trucks, constrain the stringency of the uniform, industry-wide standard. The Unreformed CAFE standard is generally set below the capabilities of limited-line manufacturers, who sell predominantly lighter and smaller light trucks. Under Reformed CAFE, which accounts for size differences in product mix, virtually all light-truck manufacturers will be required to improve the fuel economy of their vehicles. Thus, Reformed CAFE will continue to require full-line manufacturers to improve the overall fuel economy of their fleets, while also requiring limited-line manufacturers to enhance the fuel economy of the vehicles they sell.

Our estimates indicate that the Reformed CAFE system would result in greater fuel savings than the Unreformed CAFE system during the transition period, though the industry-wide compliance costs were equalized for those model years:

TABLE 4.—ESTIMATED FUEL SAVINGS FROM REFORMED AND UNREFORMED CAFE SYSTEMS FOR MYS 2008–2010

[In billions of gallons]

	MY 2008	MY 2009	MY 2010
Reformed CAFE system	0.9	2.2	2.9
Unreformed CAFE system	0.8	1.9	2.7

The improvement in fuel savings would be even greater beginning MY 2011 when targets are set at the level that maximizes net benefits. By promoting improvements across the entire industry, without as much influence imposed by the manufacturer that would be regarded as the least capable manufacturer under the Unreformed CAFE system, the Reformed CAFE system would allow for greater fuel savings at levels that remain economically practicable. We believe that the Reformed CAFE system would continue to increase overall fuel conservation substantially over time.

b. Reduced incentive to respond to the CAFE program in ways harmful to safety

To appreciate the potential safety impacts of reforming CAFE, it is necessary first to understand the key trends in the light vehicle population and in the crashes that produce serious and fatal injuries. Today's light vehicle fleet is very different from the fleet of 30 years ago when EPCA was enacted and even from the fleet of 20 years ago. A more complex and diverse fleet, including large numbers of vehicles such as minivans and SUVs that scarcely existed before, has replaced the fleet that was once dominated by passenger cars. There are now over 102 million light trucks on the road, including pickups, minivans, and SUVs, representing about 41 percent of registered light vehicles in the United States. Since light trucks now account for more than 50 percent of new light vehicle sales, their share of the total fleet is growing steadily. SUVs account for about 35 percent of light truck sales. While the overall light vehicle fleet is safer as a result of the addition of many safety features, the new fleet composition presents new safety issues.

Two issues stand out. Rollovers and crash compatibility. Both are related to reforming CAFE.

Pickups and SUVs have a higher center of gravity than passenger cars and thus are more susceptible to rolling over, if all other variables are identical. Their rate of involvement in fatal rollovers is higher than that for passenger cars—the rate of fatal rollovers for pickups, like the rate for SUVs, is twice that for passenger cars. Rollovers are a particularly dangerous type of crash. Overall, rollover affects about three percent of light vehicles involved in crashes, but accounts for 33 percent of light vehicle occupant fatalities. Single vehicle rollover crashes account for nearly 8,500 fatalities annually. Rollover crashes involving more than one vehicle account for another 1,900 fatalities, bringing the total annual rollover fatality count to more than 10,000.

Crash compatibility is the other prominent issue. Light trucks are involved in about half of all fatal two-vehicle crashes involving passenger cars. In the crashes between light trucks and passenger cars, over 80 percent of the fatally injured people are occupants of the passenger cars.

The agency believes that the manner in which fuel economy is regulated can have substantial effects on vehicle design and the composition of the light vehicle fleet. Reforming CAFE is important for vehicle safety because the current structure of the CAFE system provides an incentive to manufacturers to reduce the weight and size of vehicles, and to increase the production of vehicle types (particularly pickup trucks and SUVs) that are more susceptible to rollover crashes and are less compatible with other light vehicles. For these reasons, reforming CAFE is a critical part of the agency's effort to address the vehicle rollover and compatibility problems.

i. Reduces the incentive to offer smaller vehicles and to reduce vehicle size

Fuel price increases and competitive pressures in the 1970's and early 1980's induced vehicle manufacturers to shift their production mix toward their smaller and lighter vehicles to offset the lower fuel economy of larger and heavier vehicles and to redesign their vehicles by reducing their size and/or weight.[55] The need for manufacturers to make rapid and substantial increases in passenger car and light truck CAFE in response to the CAFE standards in late 1970's and early 1980's provided an added incentive for them to take those actions. Those actions contributed to many additional deaths and injuries.[56] While the adoption of additional safety performance requirements for those vehicles has saved lives, even more lives would have been saved if the shifting of production mix toward smaller vehicles and the reduction in size and/or weight had not occurred.

Without CAFE reform, history is likely to repeat itself. Significant increases in Unreformed light truck CAFE standards, especially if accompanied by high fuel prices, would likely induce a similar wave of shifting production mix toward smaller light trucks and reducing the size and/or weight of light trucks.

By choosing to base Reformed CAFE on a measure of vehicle size (footprint) instead of weight, the agency is aware that the CAFE program will continue to permit and to some extent reward weight reduction as a compliance strategy. The safety ramifications of

[55] Shifting production mix down toward smaller vehicles involves decreasing the production volumes of vehicles that are heavier or larger and thus have relatively low fuel economy and increasing the production volumes of lighter or smaller vehicles.

[56] NAS, p. 3.

downweighting—especially downweighting that is not achieved through downsizing—will need to be examined on a case-by-case basis in future rulemakings. Historically, the size and weight of light-duty vehicles have been so highly correlated that it has not been technically feasible to fully disentangle their independent effects on safety.[57] The agency remains concerned about compliance strategies that might have adverse safety consequences. Fortunately, it is possible that some of the lightweight materials used in a downweighting strategy may have the strength and flexibility to retain or even improve the crashworthiness of vehicles and the safety of occupants. Moreover, if downweighting were concentrated among the heaviest of the light trucks, any extra risk to the occupants of those vehicles might be more than offset be lessened risk in multi-vehicle crashes to occupants of smaller light trucks and cars. As manufacturers respond to the requirements of Reformed CAFE, the agency intends to monitor whether downweighting is chosen as a compliance strategy and, if so, how downweighting is accomplished, which vehicles are downweighted, and what the possible effects on safety (beneficial and adverse) may be.

Reforming CAFE by basing it on footprint categories would discourage reductions in vehicle size and reduce the likelihood of any new wave of mix shifting toward smaller vehicles. Reformed CAFE reduces the incentive to take those actions because both mix shifting and reducing vehicle size would increase the manufacturers' required level of CAFE for that model year.

The way in which Reformed CAFE dilutes the effect of both of those actions as compliance strategies can be seen by looking at a Reformed CAFE standard. The target average fuel economy values for the footprint categories are constants. Regardless of what compliance strategy is chosen by a manufacturer, nothing that the manufacturer does will change those values.

The distribution of vehicle models among the categories and the production volume of each models, however, are variables under the control of the manufacturers. Further, they are variables not only in the formula for calculating a manufacturer's actual level of CAFE for a model year, but also in the formula for calculating a manufacturer's required level of CAFE for that model year.

Thus, by changing the distribution of its production among the footprint categories, a manufacturer would change not only its actual level of CAFE, but also its required level of CAFE. For example, all other things being equal, if a manufacturer were to increase the production of one of its higher fuel economy models and decrease the production of one of its lower fuel economy models, both its actual level of CAFE and its required level of CAFE would increase. Likewise, again all other things being equal, if a manufacturer were to redesign a model so as to decrease its footprint (thereby presumably also decreasing its weight) sufficiently to move it into a smaller footprint category, the model would become subject to a higher target. Again, as a result, both the manufacturer's actual CAFE and required CAFE would increase.

The reduced effectiveness of those actions as compliance strategies under Reformed CAFE would make it more likely that the manufacturers would choose two other actions as the primary means of closing the gap between those two levels: reducing vehicle weight while keeping footprint constant, and adding fuel-saving technologies. Both of those actions would increase a manufacturer's actual CAFE without changing its required CAFE. Nevertheless, since a move into other footprint categories would result in a change in both actual and required CAFE, manufacturers would have more flexibility to respond to consumer demand for vehicles in other size categories without harming their ability to comply with CAFE standards or adversely affecting safety.

Unreformed CAFE creates an incentive to reduce weight regardless of whether footprint also is reduced. Reformed CAFE reduces that incentive by linking the level of the average fuel economy targets to the size of footprint so that there is an incentive to reduce weight only to the extent one can do so while also preserving size. Reformed CAFE discourages footprint reduction because as a vehicle model's footprint is reduced, the vehicle moves into categories with smaller footprints and higher targets.

We have designed the categories to increase the extent to which Reformed CAFE standards will not affect vehicle size. First, we are dividing the overall fleet of light trucks into a large enough number of footprint categories that each category includes only a relatively narrow range of footprint. This would ensure that only a fairly modest decrease in a model's footprint would cause the model to move down into the next footprint category and become subject to a higher target. Second, as noted above, we set the boundaries between the footprint categories so that a substantial portion of the vehicles in each category is located near the lower end of that category. In that location, any reduction in a vehicle's footprint would be sufficient to move the vehicle into a lower footprint category and thus subject it to a higher average fuel economy target.

ii. Effectively reduces the difference between car and light truck CAFE standards

The average fuel economy targets for the smaller footprint categories of light trucks would, by MY 2011, be at or near (and for the smallest light trucks above) the level of the current 27.5 mpg CAFE standard for cars. The reduction of the disparity between car and light truck CAFE standards—the so-called ''SUV loophole''—would promote increased safety because the disparity has created an incentive (beyond that provided by the market by itself) to design vehicles to be classified as light trucks instead of cars.[58]

One way to design vehicles so that they are classified as light trucks instead of passenger cars is to design them so that they have higher ground clearance and higher approach angles.[59] Designing vehicles with higher ground clearance results in their having a higher center of gravity. Generally speaking, light trucks have a higher center of gravity than cars, and thus are more likely to rollover.

[57] Kahane, C.J., Response to Docket Comments on NHTSA Technical Report, Vehicle Weight, Fatality Risk and Crash Compatibility of Model Year 1991–99 Passenger Cars and Light Trucks, Docket No. NHTSA–2003–16318–16, 2004 discusses the historic correlation and difficulty of disaggregating weight and ''size.'' Except for a strong correlation of track width with rollover risk, it shows weak and inconsistent relationships between fatality risk and two specific ''size'' measures, track width and wheelbase, when these are included with weight in the analyses. See also Kahane, C.J., Vehicle Weight, Fatality Risk and Crash Compatibility of Model Year 1991–99 Passenger Cars and Light Trucks, NHTSA Technical Report No. DOT HS 809 662, Washington, 2003, pp. 2–6. Evans, L. and Frick, M.C., Car Size or Car Mass—Which Has Greater Influence on Fatality Risk? American Journal of Public Health 82:1009–1112, 1992, discusses the intense historical correlation of mass and wheelbase and finds that relative mass, not relative wheelbase is the principal determinant of relative fatality risk in two-car collisions. See also, Evans, L. ''Causal Influence of Car Mass and Size on Driver Fatality Risk, '' American Journal of Public Health, 91:1076–81, 2001.

[58] NAS (p. 88) noted that that gap created an incentive to design vehicles as light trucks instead of cars.

[59] The term ''approach angle'' is defined by NHTSA in 49 CFR 523.2 as meaning ''the smallest angle, in a plane side view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the front tire static loaded radius arc and touching the underside of the automobile forward of the front tire.''

Moreover, in order to create a higher approach angle, it is necessary to raise or minimize the front structure below the front bumper, which increases the likelihood that a light truck will override a car in a front or rear end crash with a car. It also increases the likelihood that when a light truck crashes into the side of a car, its front end will pass over the car's door sill and intrude farther into the car's occupant compartment. In addition to not being structurally aligned with cars, light trucks are generally heavier than cars, which adds to their compatibility problems with cars.

c. More equitable regulatory framework

The Unreformed CAFE system does not provide an equitable regulatory framework for different vehicle manufacturers. Regardless of their product mix, all vehicle manufacturers are required to comply with the same fleet-wide average CAFE requirement. For full-line manufacturers, this creates an especially burdensome task. We note that these manufacturers often offer vehicles that have high fuel economy performance relative to others in the same size class, yet because they sell many vehicles in the larger end of the light truck market, their overall CAFE is low relative to those manufacturers that concentrate in offering smaller light trucks. As a result, Unreformed CAFE is binding for such full-line manufacturers, but not for limited-line manufacturers that predominantly sell smaller light trucks. The full-line vehicle manufacturers have expressed a legitimate competitive concern that the part-line vehicle manufacturers are entering the larger end of the light-truck market with an accumulation of CAFE credits. While this concern has merit, it is also the case that some part-line manufacturers (e.g., Toyota and Honda) have been industry innovators in certain technological aspects of fuel-economy improvement.

The reformed CAFE system will provide a more equitable regulatory framework for full-line vehicle manufacturers without denying a level playing field to the part-line vehicle makers. In order to test this proposition empirically, the agency has presented simulations of Reformed CAFE in chapter III of the PRIA for MYs 2002, 2003 and 2004. The two largest full-line makers (General Motors and Ford) would have achieved a significantly improved compliance outcome under Reformed CAFE, while some part-line vehicle manufacturers would have faced a more challenging compliance obligation.

d. More responsive to market changes

Reformed CAFE is more market-oriented because it respects economic conditions and consumer choice. Reformed CAFE does not force vehicle manufacturers to adjust fleet mix toward smaller vehicles unless that is what consumers are demanding. As the industry's sales volume and mix changes in response to economic conditions (e.g., gasoline prices and household income) and consumer preferences (e.g., desire for seating capacity or hauling capability), the expectations of manufacturers under Reformed CAFE will, at least partially, adjust automatically to these changes. Accordingly, Reformed CAFE may reduce the need for the Agency to revisit previously established standards in light of changed market conditions, a difficult process that undermines regulatory certainty for the industry. In the mid-1980's, for example, the Agency relaxed several unreformed CAFE standards because fuel prices fell more than expected when those standards were established and, as a result, consumer demand for small vehicles with high fuel economy did not materialize as expected. By moving to a market-oriented system, the agency may also be able to pursue more multi-year rulemakings that span larger time frames than the agency has attempted in the past.

B. Authority for Reformed CAFE proposal

We believe the proposed CAFE program is both consistent with the statute and better achieves the Congressional policy objectives embedded within it. The proposed program conforms to the mandates to establish maximum feasible fuel economy standards applicable on a fleet average basis and to the Congressional intent to establish those standards only after balancing the nation's need to conserve energy, the effect of other standards on fuel economy, technological feasibility, economic practicability and other public policy considerations.

The statute provides considerable flexibility with regard to the establishment and implementation of light truck standards. Congress recognized that the universe of light trucks is comprised of varying types of vehicles meeting different consumer needs. The CAFE statute mandates that we issue one or more average fuel economy standards for light trucks for each model year. Congress chose harmonic averaging over standards applicable to individual vehicles so that the CAFE statute's overriding goal of conserving energy would be pursued in a manner that preserves manufacturer flexibility and consumer choice. H. Rpt. 94–340, p. 87; S. Rpt. 94–179, p. 6.

An ''average fuel economy standard'' is defined as ''a performance standard specifying a minimum level of average fuel economy applicable to a manufacturer in a model year.'' 49 U.S.C. 32901(a)(6). The statute directs NHTSA to prescribe through regulation average fuel economy standards for automobiles (except passenger automobiles) manufactured by a manufacturer in a model year. 49 U.S.C. 32902(a). The standard is linked to ''automobiles manufactured by a manufacturer,'' which is defined as including ''every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person that is exported not later than 30 days after the end of the model year in which the automobile is manufactured.'' 49 U.S.C. 32901(a)(4).

While NHTSA historically has established a light truck standard with a single level common to all manufacturers, the statute does not require us to do so. Indeed, the statute expressly defines ''an average fuel economy standard'' as a performance standard applicable to ''a manufacturer,'' and directly links the establishment of standards to the manufacturer-specific definition of ''automobiles manufactured by a manufacturer.'' It appears clear that Congress left to the agency's discretion the determination of whether to establish a single standard applicable collectively to all manufacturers or to set a series of standards applicable to individual manufacturers to ensure that each manufacturer achieves the maximum feasible level it can achieve, given its product mix.

We note that the statutory text phrasing with regard to setting ''maximum feasible'' standards for light truck manufacturers is susceptible to more than one interpretation. We are directed to establish standards for each model year and instructed: ''each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.'' 49 U.S.C. 32902(a). The use of the plural ''manufacturers,'' instead of the singular, could be read to indicate that Congress intended that the standard for any given model year collectively be the maximum feasible level applicable to all manufacturers. When read in

conjunction with the other sentences in that provision, however, the statutory phrasing could also indicate that, by using the plural, Congress anticipated that the standards would reflect the different product offerings of manufacturers, but that each standard would be the maximum feasible for the manufacturer to which it applied.

Reference beyond the phrasing of that particular sentence does not provide much additional clarity. The language used in the remainder of Section 32902(a) suggests that Congress anticipated the possibility of standards set at different levels for different manufacturers, yet a discussion of industry-wide considerations in the legislative history (conference report) suggests an expectation of a single CAFE level applicable to all manufacturers.

We believe that Congress left to NHTSA the discretion to establish light truck standards in the most effective way possible to achieve the maximum level of fuel conservation that is feasible for each manufacturer. NHTSA must, consistent with the statute, take industry-wide considerations into account to ensure that the methodology used to establish these levels ensures, on an industry-wide basis, technological feasibility and economic practicability and accounts for the impact of other regulatory activity.

Our proposal for an approach requiring improvement by most manufacturers and resulting in higher overall fuel savings implements better and more fully the statutory mandate to set maximum feasible standards and adheres more faithfully to the guidance in the legislative history to base the standards on industry-wide considerations than an approach requiring improvement by only a few manufacturers in the industry. On both an industry-wide basis and an individual manufacturer basis, the former approach provides no less assurance than the latter approach that the resulting standards are technologically feasible or economically practicable. In fact, since the former approach is based on a manufacturer's own product mix, it ensures that the level of average fuel economy required of each manufacturer is tailored to the circumstances and thus the capabilities of that manufacturer.

The methodology proposed today is similar to an approach suggested to, but not adopted by, NHTSA in a study submitted to the agency in 1980. See Report of the Regulatory Analysis Review Group, Council on Wage and Price Stability, March 31, 1980, submitted as attachment to letter from R. Robert Russell, Director of the Council, to Joan Claybrook, Administrator, NHTSA. FE–78–01–No1–175 (Document 175 under Notice 1 in Docket FE–78–01.) After considering a class-based CAFE system, the RARG suggested a composite standard developed by setting fuel economy targets for various categories of light trucks and then using a predetermined fleet mix for each manufacturer to turn these targets into a composite standard.

In assessing the permissibility of its suggested approach, the RARG was considering the CAFE statute in the wake of its enactment and with an eye toward developing a system that would best achieve the Congressional objectives arising from the oil crisis of the 1970s. The RARG noted its generally contemporaneous understanding of the statutory parameters:

> Nothing in the statute forbids this approach. The statute requires that passenger car standards be the same for all manufacturers. There is no similar requirement for the truck standards. Indeed, the statute explicitly authorizes separate standards for different classes of trucks, which would inevitably result in varying effects on the different manufacturers. Since this is explicitly permitted, it seems unlikely that composite standards, which would result in similarly varying effects, are forbidden. NHTSA's treatment of this issue in the preamble to its final truck standards for model years 1980–81 suggests that it agrees. 43 *FR* 11997–8. There, NHTSA discussed a proposed fleet-average standard at some length '' eventually rejecting it on policy grounds '' without suggesting that it might be illegal.

RARG Report at 29.[60]

We agree. In deciding which approach to propose in this rulemaking for establishing standards for a model year, the agency narrowed its choices to two approaches: establishing conventional average fuel economy standards, one for each of several classes, with or without credit transfer between classes in accordance with 49 U.S.C. 32903(a), or establishing average fuel economy targets, one for each of several attribute-based categories, and an overall average fuel economy standard in the form of a production-weighted, harmonically averaged step-function based on a combination of those targets and each manufacturer's total production and product mix for that year. NHTSA believes that either approach is permissible under the CAFE statute. The agency also believes that a continuous function approach would satisfy the statute.

The statute explicitly authorizes the former approach, separate standards for different classes of light trucks. That class approach would inevitably result in varying effects on the different manufacturers, at least partially due to differences in product mix. If each manufacturer exactly complied with the standard for each class, a manufacturer's overall CAFE would differ from those of other manufacturers solely as a function of each manufacturer's product mix. Since the CAFE statute explicitly permits this, NHTSA believes that the step-function approach, which would result in similarly varying effects, is permissible. Nothing in the statute explicitly forbids the step-function approach. While the statute requires that passenger car standards be the same for all manufacturers, there is no similar requirement for the light truck standards.

The step-function approach is thoroughly grounded in the CAFE statute. Under that approach, the foundation of the standard for each model year would be the targets for the categories. The target for each footprint category would be the same for, and applicable to, all manufacturers that produce vehicles in that footprint category. The selection of the target for a footprint category would be based on industry-wide considerations, as contemplated in the conference report.

> Such determination [of maximum feasible average fuel economy level] should take industry-wide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer that might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic manufacturers that currently exist and the possible implications for the national economy and for reduced competition association [sic] with a severe strain on any manufacturer. * * *

S. Rep. No. 94–516, 94th Congress, 1st Sess. 154–155 (1975).

Specifically, the agency would select a target based on an average of the levels of fuel economy improvement that are technologically feasible and economically efficient for a much more substantial part of the industry than is

[60] In considering a composite standard approach suggested by Ford, the agency seemed to confuse that approach with a class based approach. The agency noted its belief that a single all-inclusive standard would provide more flexibility than class based standards. 45 FR 11997–98. In the final rule, the agency raised a question about its authority to implement a composite standard, but did so without reaching any conclusions and without offering any analysis of its own or even adopting that of any participant in the rulemaking. 45 FR 81593 at 81594. We have now conducted our own legal analysis, which agrees with the RARG's analysis.

focused upon in setting standards through the traditional method. Each standard would rest in large part on a composite of determinations regarding the average fuel economy achievable by the manufacturers in each of the footprint categories. While CAFE traditionally gave particular regard to the least capable of the largest three manufacturers in determining fuel economy standards, this proposal would use an average based on the largest seven manufacturers in setting the targets. Reliance on a more substantial portion of the industry for this purpose would build in a measure of assurance that the targets are technologically feasible and economically practicable.

The step-function ultimately picked as the standard would also be the result of further consideration of industry-wide considerations as well as the careful balancing, as mandated by Congress, of the statutory factors, including the economic practicability for the industry. Since the product mix used to help determine a manufacturer's required level of fuel economy for a particular model year would be the manufacturer's actual mix in that model year, instead of in a prior reference year, a manufacturer would have the flexibility necessary to vary its mix in response to changes in consumer preferences. This aspect of the step-function approach automatically builds in a further measure of assurance that the standards will not necessitate product restrictions and thus will be economically practicable.

Each step-function standard would apply equally to all manufacturers. To the extent that different manufacturers have different product mixes, they would be subject to different required levels of average fuel economy. However, if two manufacturers had the same product mix and thus were similarly situated, they would be subject to the same required level of average fuel economy.

Each manufacturer's compliance obligation is determined through application of the target numbers to the step function calculation. The obligation remains premised on average fuel economy level for each manufacturer's fleet and permits manufacturers to earn credits or requires them to pay civil penalties for exceeding or failing to reach the fuel economy level applicable to them. The footprint category targets and standards would be established within the statutory lead time of 18 months [61] and, because the manufacturers know the formula for compliance, they have the flexibility to ensure compliance by monitoring and adjusting their product offerings. A manufacturer's compliance would be determined at the end of each model year by comparing the step function standard derived with the target numbers to the step function standard derived with the company's actual production weighted fuel economy performance.

We are proposing to permit manufacturers the option of complying with either the Unreformed system or the Reformed system during the three-model year transition period. We believe that the levels established for each system constitute the maximum feasible levels for each system. We recognize that, depending on manufacturer's choices, the fuel savings (and cost burdens) associated with these three model years may be lower than the fuel savings that would result if either the Unreformed or Reformed program were used alone. NHTSA believes that this is an acceptable outcome that is justified by ensuring an orderly transition to a fully phased-in Reformed program in MY 2011.

We believe that this proposal presents an approach having the potential over time to achieve substantially more overall fuel savings than the historical approach to establishing CAFE standards. In order to ensure both technological feasibility and economic practicability, CAFE standards have traditionally been set with particular regard to the capabilities of the least capable manufacturer with a significant share of the market. This approach helps to account for the fact that full-line manufacturers, with product offerings serving the full range of consumer needs and demand, generally will have a fleet average fuel economy level less than those manufacturers who choose to serve only part of the market—typically offering products in the smaller and lighter light truck category. The traditional approach to CAFE provides no regulatory incentive for limited line manufacturers to incorporate additional technologies because none are needed to meet CAFE standards established at an appropriate level for full-line manufacturers.

Under the program proposed today, CAFE standards will ultimately be established in a way that encourages technology use by all companies, not just those with lower fleet average fuel economy levels. By incorporating available technologies across all manufacturers, we believe that the Reformed program will enhance overall fuel savings over time. This is especially true after we transition fully to a system in which the category targets are established at a level based on maximizing net benefits.

However, we recognize the inequity of potentially implementing unanticipated additional requirements and costs without providing adequate lead-time. Just as the law permits us to consider motor vehicle safety in addition to the express factors when setting CAFE standards, we believe the need for transition is a factor that we should take into account when moving toward the Reformed CAFE system. Our preliminary determination is that providing a three-year transition period with a compliance option will provide an opportunity for experimentation by the manufacturers and effect a quicker transition to a system likely to save more fuel savings over time than would either implementing an abrupt change after providing appropriate lead time or maintaining the status quo. The agency requests comments on whether a transition period shorter than three years would be feasible.

Today's proposal seeks to ensure that either system remains economically practicable and technologically feasible. By equating overall industry costs during the transition period with the overall costs associated with the traditional approach, we are confident that the Reformed proposal will not impose industry costs beyond those otherwise incurred. In addition, the same technologies are used in both analyses, although applied somewhat differently.

We believe the Reformed proposal better incorporates the Congressional intent that we establish CAFE obligations with an eye toward industry-wide considerations. The category targets are established not by focusing on one manufacturer, but rather by averaging the manufacturer-specific levels derived through the marginal

[61] Under Reformed CAFE, as under Unreformed CAFE, the agency is proposing to establish standards for future model years based, in the first instance, on the manufacturers' own plans regarding the types and sizes of vehicles they plan to produce in those years and their projected production volumes of those vehicles. In determining the level of the proposed standards, the agency also increases the level of CAFE above that achievable under those plans through identifying technologies that it deems feasible, practicable and cost-effective.

If manufacturers follow their plans, enhanced to the extent necessary by the incorporation of additional fuel savings technologies, their required level of CAFE will not change. However, under Reformed CAFE, if they depart from their plans regarding the size of their vehicles and/or the distribution of their production and thus produce vehicles whose size is, on average, larger or smaller than that of the vehicles in their original plans, their required level of CAFE will change. If they do depart from their plans, they could determine, with a high degree of mathematical precision, the magnitude of that change.

cost/benefit analysis, thus including all complying companies in determining CAFE responsibilities. The new program also provides better flexibility—a significant Congressional concern when enacting and later amending the CAFE statute—by better linking CAFE obligations to each manufacturer's actual product sales.

Reformed CAFE continues all the essential elements required by the statute. It states CAFE requirements in terms of miles per gallon, retains the necessary fleet averaging, allows manufacturers to earn credits and requires them to pay fines for shortfalls and applies a consistent methodology to all manufacturers with equivalent category target levels. Reformed CAFE provides manufacturers with adequate notice of their responsibilities, complying with the 18-month lead time for establishing a standard, while simultaneously providing the flexibility to alter their product plans and offerings in response to changes in market conditions (a problem that has required the agency at times to lower previously established CAFE standards). Reformed CAFE also enhances our ability to achieve maximum feasible fuel economy by focusing on the addition of available technology to all product lines and encouraging greater fuel savings and lower overall industry costs.

C. Comparison of estimated costs and estimated benefits

1. Costs

In order to comply with the proposed Reformed CAFE standards, we estimate the average incremental cost per vehicle to be $54 for MY 2008, $142 for MY 2009, and $186 for MY 2010. In MY 2011, the incremental cost would be $275. Under the Reformed CAFE system, a greater number of manufacturers would be required to improve their fleets and make additional expenditures than under the Unreformed CAFE system. The total incremental cost (the cost necessary to bring the corporate average fuel economy for light trucks from 22.2 mpg to the proposed standards) is estimated to be $505 million for MY 2008, $1,332 million for MY 2009, and $1,802 million for MY 2010. In MY 2011, the total incremental cost is estimated to be $2,656 million. The level of additional expenditure that would be necessary beyond already planned investment varies for each individual manufacturer. These individual expenditures are discussed in more detail in the PRIA. However, as stated above, because the costs are distributed across a greater share of the industry, the costs required of the least capable manufacturer with a significant share of the market are lower under the Reformed system than under the Unreformed system.

2. Benefits

The benefits analysis applied to the proposed standards under the Unreformed CAFE system was also applied to the standards proposed under the Reformed CAFE system. Benefit estimates include both the benefits from fuel savings and other economic benefits from reduced petroleum use. The agency relied on the same factors and assumptions as discussed above for the proposed Unreformed CAFE standards. A more detailed discussion of the application of this analysis to the required fuel economy levels under the Reformed CAFE system can be located in the PRIA.

Adding benefits from fuel savings to other economic benefits from reduced petroleum use as a result of the Reformed CAFE standards produced an estimated incremental benefit to society, of $73 per vehicle for MY 2008, $170 per vehicle for MY 2009 and $220 per vehicle for MY 2010. In MY 2011, the incremental benefits were estimated to be $315 per vehicle. The total value of these benefits is estimated to be $694 million for MY 2008, $1,633 million for MY 2009, $2,144 million for MY 2010, $3,069 million for MY 2011, based on fuel prices ranging from $1.51 to $1.58 per gallon. The benefits analysis for Reformed CAFE is based on the same assumptions as the benefits analysis for Unreformed CAFE, as described above in III.D.2.

Based on the forecasted light truck sales from AEO 2005 and an assumed baseline fuel economy of 22.2 mpg (the MY 2007 standard), we estimated the fuel savings from the Reformed CAFE program. These estimates are provided as present values determined by applying a 7 percent discount rate to the future impacts. We translated impacts other than fuel savings into dollar values, where possible, and then factored them into our total benefit estimates. This analysis resulted in estimated lifetime fuel savings of 0.9 billion, 2.2 billion, and 2.9 billion gallons under the proposed Reformed CAFE standards for MY 2008, 2009, and 2010 respectively. We estimated the fuel savings for MY 2011 at 4.1 billion gallons.

NHTSA estimates that the direct fuel-savings to consumers account for the majority of the total benefits, and by themselves exceed the estimated costs of adopting more fuel-efficient technologies. In sum, the total incremental costs by model year compared to the incremental societal benefits by model year are as follows:

TABLE 5.—COMPARISON OF INCREMENTAL COSTS AND INCREMENTAL BENEFITS FOR THE PROPOSED REFORMED CAFE STANDARDS

[In millions]

	MY 2008	MY 2009	MY 2010	MY 2011
Total Incremental Costs *	$505	$1,332	$1,802	$2,656
Total Incremental Benefits *	694	1,633	2,144	3,069

* Relative to the 22.2 mpg standard for MY 2007.

In light of these figures, we have tentatively concluded that the standards proposed under the Reformed CAFE system serve the overall interests of the American people and is consistent with the balancing that Congress has directed us to do when establishing CAFE standards. For all the reasons stated above, we believe the proposed Reformed CAFE standards represent fuel economy levels that are economically practicable and, independently, that are a cost beneficial advancement for American society. A more detailed explanation of our analysis is provided in the PRIA.

3. Uncertainty

The agency performed a probabilistic uncertainty analysis to examine the variation in estimates of factors that determine the costs and benefits of higher CAFE requirements. The analysis indicates that the Agency is highly certain that the benefits of the proposed CAFE levels will exceed their costs for all 4 model years of Reformed standards included in the proposal.

D. Proposed standards

We have tentatively determined that the Reformed CAFE system and associated target levels for MYs 2008–2011 would result in required fuel economy levels that are both technologically feasible and economically practicable for manufacturers. The proposed standard and target levels are as follows:

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MANUFACTURER'S REQUIRED FUEL ECONOMY LEVEL

Manufacturer's Light Truck Production for Applicable Model Year

$$\frac{\text{Category 1 Production Level}}{\text{Category 1 Target}} + \frac{\text{Category 2 Production Level}}{\text{Category 2 Target}} + \frac{\text{Category 3 Production Level}}{\text{Category 3 Target}} + \frac{\text{Category 4 Production Level}}{\text{Category 4 Target}} + \frac{\text{Category 5 Production Level}}{\text{Category 5 Target}} + \frac{\text{Category 6 Production Level}}{\text{Category 6 Target}}$$

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TABLE 6.—PROPOSED TARGETS

Category	1	2	3	4	5	6
Range of vehicle footprint (sq. ft.)	≤43.0	>43.0–47.0	>47.0–52.0	>52.0–56.5	>56.5–65.0	>65.0
MY 2008 Targets	26.8	25.6	22.3	22.2	20.7	20.4
MY 2009 Targets	27.4	26.4	23.5	22.7	21.0	21.0
MY 2010 Targets	27.8	26.4	24.0	22.9	21.6	[62] 20.8
MY 2011 Targets	28.4	27.1	24.5	23.3	21.9	21.3

These targets would result in the required fuel economy levels increasing each successive year for all manufacturers except Hyundai. Based on the product plans provided by manufacturers in response to the December 2003 request for information and the incorporation of publicly available supplemental data and information, the agency has estimated the required fuel economy levels for the individual manufacturers as follows:

TABLE 7.—ESTIMATES OF REQUIRED FUEL ECONOMY LEVELS BASED ON THE PROPOSED TARGET LEVELS AND CURRENT INFORMATION

[in mpg]

Manufacturer	MY 2008	MY 2009	MY 2010	MY 2011
BMW	23.8	24.8	25.1	25.7
Suzuki	26.0	26.7	26.8	27.5
Volkswagen	22.7	23.9	24.3	24.8
General Motors	22.2	22.8	23.2	23.7
Ford	22.4	22.9	23.1	23.6
DaimlerChrysler	22.8	23.5	23.7	24.2
Honda	23.1	24.0	24.2	24.8
Hyundai	24.2	25.9	25.7	26.3
Nissan	22.1	22.8	23.2	23.7
Toyota	23.2	24.1	24.5	25.0
Fuji (Subaru)	24.8	25.6	25.8	26.4
Porsche	22.3	23.5	24.0	24.5
Isuzu	22.3	22.9	23.2	23.7

As stated previously, we recognize that the manufacturer product plans that we used in developing the manufacturers' required fuel economy levels are likely already outdated in some respects. We fully expect the manufacturers to revise those plans to reflect subsequent developments. Further, we note that a manufacturer's required fuel economy level for a model year under the Reformed CAFE system would be based on its actual production numbers in that model year. Therefore, its official required fuel economy level would not be known until the end of that model year. However, because the category targets would be established in advance of the model year, a manufacturer should be able to estimate its required level accurately and develop a product plan that would comply with that level.

V. Implementation of options

A. Choosing the Reformed or Unreformed CAFE system

As part of the transition to a fully phased-in Reform CAFE system in MY 2011, the agency is proposing that for MYs 2008–2010, manufacturers have the option of complying under the Reformed CAFE system or the Unreformed CAFE system. Manufacturers would be required to announce their selection for a model year in the mid-model year report required for that model year in 49 CFR 537.7. The mid-model year report is the most accurate report that the manufacturers currently provide directly to NHTSA and does not differ significantly from their final report. A manufacturer's selection would be irrevocable for that MY. However, a manufacturer would be permitted to select the alternate compliance option in the following MY. Beginning MY 2011, we are proposing to permit compliance only under the Reformed CAFE system.

The proposed CAFE levels for both systems have been presented in the above discussion. However, after receiving comments and reviewing any additionally provided data, we may decide to set the standards at different levels than those proposed. Factual uncertainties that could result in lower standards include the possibility that planned technological actions may not achieve anticipated fuel economy benefits or may prove to be infeasible. Similarly, factual uncertainties that could result in higher standards include the possibility that manufacturers may be able to improve fuel economy in their fleets by further technological advances beyond those currently planned.

B. Application of credits between compliance options

The EPCA credit provisions would operate under the Reformed CAFE system in the same manner as they do under the Unreformed CAFE system.

[62] The reformed standards are a result of the product plan data. If the distribution of vehicles or fuel economies of vehicles changes from year to year, those changes will be reflected in the category targets. Because of the process of determining the category targets, sometimes the targets will not increase over time in a specific category. This is the case for 20.8 in category 6 in MY2010. The target goes from 21.0 in MY2009 to 20.8 in MY2010—a decrease of 0.2 mpg. This is a result of the product plan data changing.

Although this goes against intuition, the essential point is that the overall fuel economy goal for each manufacturer increases in each year. This type of phenomenon could be avoided through the use of a continuous function. See IV.A.4.a. Step-function vs. continuous function above.

The harmonic averages used to determine compliance under the Reformed CAFE system permit the amount, if any, of credits earned to be calculated as under the Unreformed CAFE system:

Credits = (Actual CAFE – Standard CAFE) * 10 * Total Production

Credits earned in a model year could be carried backward or forward as currently done in the Unreformed CAFE system.

Further, credits would be transferable between the two systems. Both Unreformed CAFE and Reformed CAFE use harmonic averaging to determine fuel economy performance of a manufacturer's fleet. Under the Reformed CAFE, fuel savings from under- and over-performance with each category are generated and applied almost identically to the way in which this occurs under the Unreformed CAFE system. As a result, the two systems generate credits with equal fuel savings value. Therefore, credits earned in a model year under Unreformed CAFE would be fully transferable forward to a model year under the Reformed CAFE system, up to the statutory limit of three years. Likewise, credits under Reformed CAFE could be carried back to Unreformed CAFE.

VII. Impact of other Federal Motor Vehicle Standards

The statute specifically directs us to consider the impact of other Federal vehicle standards on fuel economy. This statutory factor constitutes an express recognition that fuel economy standards should not be set without due consideration given to the effects of efforts to address other regulatory concerns, such as motor vehicle safety and emissions. The primary influence of many of these regulations is the addition of weight to the vehicle, with the commensurate reduction in fuel economy.

A. Federal Motor Vehicle Safety Standards

The agency has evaluated the impact of the Federal motor vehicle safety standards (FMVSS) using MY 2007 vehicles as a baseline. We have issued or proposed to issue a number of FMVSS that become effective between the MY 2007 baseline and MY 2010. The fuel economy impact, if any, of these new requirements will take the form of increased vehicle weight resulting from the design changes needed to meet new FMVSSs.

The average test weights (curb weight plus 300 pounds) of the light truck fleet for General Motors, Ford, and DaimlerChrysler in MY 2008, MY 2009, and MY 2010 are 4,904, 4,897, and 4,909, respectively. Thus, overall, the three largest manufacturers of light trucks expect weight to remain almost unchanged during the time period addressed by this rulemaking. The changes in weight include all factors, such as changes in the fleet mix of vehicles, required safety improvements, voluntary safety improvements, and other changes for marketing purposes. These changes in weight over the three model years would have a negligible impact on fuel economy.

NHTSA has issued a number of proposed and final rules on safety standards that are proposed to be effective or are effective between MYs 2008–2010. These have been analyzed for their potential impact on light truck fuel economy weights for MYs 2008–2010:

1. FMVSS 138, tire pressure monitoring system

As required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, NHTSA is requiring a Tire Pressure Monitoring System (TPMS) be installed in all passenger cars, multipurpose passenger vehicles, trucks and buses that have a Gross Vehicle Weight Rating of 10,000 pounds or less. The effective dates are based on the following phase-in schedule:

20 percent of light vehicles produced between September 1, 2005 and August 31, 2006,

70 percent of light vehicles produced between September 1, 2006 and August 31, 2007,

100 percent of light vehicles produced after September 1, 2007 are required to comply.

Thus, for MY 2008, an additional 30 percent of the fleet will be required to meet the standard as compared to MY 2007. We estimate from a cost teardown study that the added weight for an indirect system is about 0.156 lbs. and for a direct system is 0.275 to 0.425 lbs. Initially, direct systems will be more prevalent, thus, the increased weight is estimated to be average 0.35 lbs. (0.16 kilograms). Beginning in MY 2008, the weight increase from FMVSS No. 138 is anticipated to be 0.11 pounds (0.05 kilograms) [0.35 lbs. * 0.3 and 0.16 kg * 0.3].

As stated in the TPMS final rule,[63] by promoting proper tire inflation, the installation of TPMS will result in better fuel economy for vehicle owners that previously had operated their vehicles with under-inflated tires. However, this will not impact a manufacturer's compliance under the CAFE program. Under the CAFE program, a vehicle's fuel economy is calculated with the vehicle's tires at proper inflation. Therefore, the fuel economy benefits of TPMS have not been considered in this rulemaking.

2. FMVSS 202, head restraints

The final rule requires an increase in the height of front seat outboard head restraints in pickups, vans, and utility vehicles, effective September 1, 2008 (MY 2009). If the vehicle has a rear seat head restraint, it is required to be at least a certain height. The initial head restraint requirement, established in 1969, resulted in the average front seat head restraints being 3 inches taller than pre-standard head restraints and adding 5.63 pounds[64] to the weight of a passenger car. With the new final rule, we estimate the increase in height for the front seats to be 1.3 inches and for the rear seat to be 0.26 inch, for a combined average of 1.56 inches.[65] Based on the relationship of pounds to inches from current head restraints, we estimate the average weight gain across light trucks would be 2.9 pounds (1.3 kilograms). (5.63/3 * 1.56 = 2.93 lbs.)

3. FMVSS 208, occupant crash protection

This final rule requires a lap/shoulder belt in the center rear seat of light trucks. There are an estimated 5,061,079[66] seating positions in light trucks needing a shoulder belt, where they currently have a lap belt. This estimate of seating positions is a combination of light trucks, SUVs, minivans and 15 passenger vans that have either no rear seat, or one to four rear seats that need shoulder belts. This estimate was based on sales of 7,521,302 light trucks in MY 2000. Thus, the average light truck needs 0.67 shoulder belts. The average weight of a rear seat lap belt is 0.92 lbs. and the average weight of a manual lap/shoulder belt with retractor is 3.56 lbs.[67] Thus, the anticipated weight gain is 2.64 pounds per shoulder belt. We estimate the

[63] 70 FR 18136, 18139; April 8, 2005; Docket No. 2005–28506.

[64] Tarbet, Marcia J., ''Cost and Weight Added by Federal Motor Vehicle Safety Standards for Model Years 1968–2001 in Passenger Cars and Light Trucks'', NHTSA, December 2004, DOT–HS–809–834. Pg. 51. (*http://www.nhtsa.dot.gov/cars/rules/regrev/evaluate/80934.html*).

[65] ''Final Regulatory Impact Analysis, FMVSS No. 202 Head Restraints for Passenger Vehicles'', NHTSA, November 2004, Docket No. 19807–1, pg. 74.

[66] ''Final Economic Assessment and Regulatory Flexibility Analysis, Cost and Benefits of Putting a Shoulder Belt in the Center Seats of Passenger Cars and Light Trucks'', NHTSA, June 2004, Docket No. 18726–2, pg. 33.

[67] Tarbet 2004, p. 84.

average weight gain per light truck for the shoulder belt would be 1.8 pounds (0.8 kilograms) (2.64 * .67 = 1.77 lbs.).

A second, potentially more important, weight increase depends upon how the center seat lap/shoulder belt is anchored. The agency has allowed a detachable shoulder belt in this seating position, which could be anchored to the ceiling or other position, without a large increase in weight (less than 1 lb.). If the center seat lap/shoulder belt were anchored to the seat itself, typically the seat would need to be strengthened to handle this load (the agency requests comments on this weight increase). If the manufacturer decides to change all of the seats to integral seats, having all three seating positions anchored through the seat, then both the seat and flooring needs to be strengthened (again the agency requests comments on this weight increase, which could be 10 to 20 lbs.). The agency requests manufacturer's plans in this area and predicted weight increases.

The effective dates are based on the following phase-in schedule:

50 percent of light vehicles produced between September 1, 2005 and August 31, 2006,
80 percent of light vehicles produced between September 1, 2006 and August 31, 2007,
100 percent of light vehicles produced after September 1, 2007.

Thus, for MY 2008, an additional 20 percent of the fleet will be required to meet the standard. We estimate the average weight gain per light truck for the shoulder belt would be 0.36 lbs (0.16 kg) [1.8 pounds (0.8 kilograms) * 0.2] compared to MY 2007. For the anchorage, the average weight increase would be 0.2 pounds (0.09 kg) or more.

4. FMVSS 214, side impact protection

On May 17, 2004, NHTSA proposed to upgrade Federal Motor Vehicle Safety Standard (FMVSS) No. 214, ''Side impact protection,'' to require vehicle manufacturers to provide head protection to occupants involved in side impacts with narrow fixed objects, such as telephone poles and trees, and in vehicle-to-vehicle collisions. The Standard already requires thoracic protection in a dynamic test (69 FR 27990). If this proposal is adopted as a final rule, the agency anticipates, based on current technology, that vehicle manufacturers would respond by installing either a combination head/thorax side air bag or window curtains.

A teardown study of 5 thorax air bags resulted in an average weight increase per vehicle of 4.77 pounds (2.17 kg).[68] A second teardown study of 3 combination head/thorax air bags resulted in a similar average weight increase per vehicle of 4.38 pounds (1.99 kg).[69] This second study also performed teardowns of 5 window curtain systems. One of the window curtain systems was very heavy (23.45 pounds). The other four window curtain systems had an average weight increase per vehicle of 6.78 pounds (3.08 kg) and that increase is assumed to be the average for all vehicles in the future.

If manufacturers install thorax bags with a window curtain, the average weight increase would be 11.55 pounds (4.77 + 6.78) or 5.25 kg (2.07 + 3.08). In MY 2003, about 17 percent of the fleet had thorax air bags, 7 percent had combination air bags, and 10 percent had window curtains. The combined average weight for these systems in MY 2003 was 1.8 pounds (0.82 kg). Thus, the future increase in weight for side impact air bags and window curtains compared to MY 2003 installations is 9.75 pounds (11.55 − 1.8) or 4.43 kg (5.25 − 0.82).

We recognize that many manufacturers are incorporating side impact air bags on a voluntary basis. Therefore, we have included the weight associated with the proposed FMVSS No. 214 upgrade in the impacts of the voluntary improvements discussed below.

5. FMVSS 301, fuel system integrity

This final rule amends the testing standards for rear end crashes and resulting fuel leaks. Many vehicles already pass the more stringent standards, and those affected are not likely to be pick-up trucks or vans. It is estimated that weight added will be only lightweight items such as a flexible filler neck. We estimate the average weight gain across this vehicle class would be 0.24 pounds (0.11 kilograms).

The effective dates are based on the following phase-in schedule:

40 percent of light vehicles produced between September 1, 2006 and August 31, 2007,
70 percent of light vehicles produced between September 1, 2007 and August 31, 2008,
100 percent of light vehicles produced after September 1, 2008 are required to comply.

Thus, 60 percent of the fleet must meet FMVSS 301 during the MY 2008–2010 time period. Thus, the average weight gain during this period would be 0.14 pounds (0.07 kilograms).

6. Cumulative weight impacts of the FMVSSs

In summary, NHTSA estimates that weight additions required by FMVSS regulations that will be effective in MYs 2008–2010, compared to the MY 2007 fleet will increase light truck weight by an average of 3.71 pounds (1.67 kg.). The agency recognizes that there are several safety improvements being made voluntarily. Some of these are for marketing purposes and others are to do better on government or insurance industry tests involving vehicle ratings. Likely voluntary safety improvements will add 11.75 pounds or more (5.34 kg or more) compared to MY 2003 installations. A more detailed discussion of the impact of voluntary safety improvements is provided in the PRIA.

B. Federal Motor Vehicle Emissions Standards

With input from EPA, NHTSA has evaluated the impact of a number of vehicle related emissions standards on fuel economy. In addition, NHTSA's draft Environmental Assessment examines how the CAFE standards would impact air quality by affecting emissions of criteria pollutants. Many of these standards and regulations are currently being implemented through a multi-year phase-in. NHTSA believes there will not be any fuel economy impact between the MY 2007 baseline and MY 2010 resulting from federal or state emissions standards or regulations.

1. Tier 2 requirements

On February 10, 2000, the EPA published a final rule (65 FR 6698) establishing new federal emissions standards for passenger cars and light trucks. These new emissions standards, known as Tier 2 standards, focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles—nitrogen oxides (NO_X) and non-methane organic gases (NMOG), consisting primarily of hydrocarbons (HC) and contributing to ambient volatile organic compounds (VOC). Passenger cars, SUVs, pickups, vans, and medium duty passenger vehicles (MDPVs)[70] are subject to the same national emission standards. Vehicles and fuels are treated

[68] Khadilkar, et al. ''Teardown Cost Estimates of Automotive Equipment Manufactured to Comply with Motor Vehicle Standard—FMVSS 214(D)—Side Impact Protection, Side Air Bag Features'', April 2003, DOT HS 809 809.

[69] Ludtke & Associates, ''Perform Cost and Weight Analysis, Head Protection Air Bag Systems, FMVSS 201'', page 4–3 to 4–5, DOT HS 809 842.

[70] For a definition and discussion of these vehicles, see section IX, Applicability of the standards.

as a system, so cleaner vehicles will have low-sulfur gasoline to facilitate greater emission reductions. The Tier 2 emission standards apply to all passenger vehicles, regardless of whether they run on gasoline or diesel fuel.

Tier 2 standards are fully implemented for passenger cars and light trucks (LDT1 and LDT2) in 2007, and for MDPVs by 2009 at the latest. Thus, all vehicles subject to the 2008 light truck rulemaking are affected.

When issuing the Tier 2 standards, EPA responded to comments regarding the Tier 2 standard and its impact on CAFE by indicating that it believed that the Tier 2 standards would not have an adverse effect on fuel economy. The EPA stated that it saw no real energy impacts with respect to the Tier 2 vehicle program and that the technologies needed for conventional gasoline engines to meet the Tier 2 standards should have no significant effect on fuel economy for those engines, which represent over 99 percent of the current light-duty fleets. Similarly, EPA states that it does not believe that the stringent Tier 2 emission standards will preclude promising fuel efficient technologies.[71] EPA Tier 2 emission standards increase the stringency of the emission standards of diesel engines starting in 2008. Several manufacturers have stated that they have working diesel engines that will meet the Tier 2 standards. In addition, the EPA test facility in Ann Arbor, Michigan has a working prototype diesel engine that meets the Tier 2 standard. The agency did not apply diesel engines frequently as a CAFE compliance technology because there were other technologies that were more cost effective in meeting the standard.

2. Onboard vapor recovery

On April 6, 1994, EPA published a final rule (59 FR 16262) controlling vehicle-refueling emissions through the use of onboard refueling vapor recovery (ORVR) vehicle-based systems. These requirements applied to light-duty vehicles beginning in MY 1998, and phased-in over three model years. The ORVR requirements also apply to light-duty trucks with a GVWR of 6,000 pounds or less beginning in MY 2001 and phasing-in over three model years. For light-duty trucks with a GVWR of 6,001–8,500 lbs, the ORVR requirements first apply in MY 2004 and phase-in over three model years.

The ORVR requirements impose a weight penalty on vehicles as they necessitate the installation of vapor recovery canisters and associated tubing and hardware. However, the operation of the ORVR system results in fuel vapors being made available to the engine for combustion while the vehicle is being operated. As these vapors provide an additional source of energy that would otherwise be lost to the atmosphere through evaporation, the ORVR requirements do not have a negative impact on fuel economy.

3. California Air Resources Board LEV II

The State of California Low Emission Vehicle II regulations (LEV II) apply to passenger cars and light trucks as of MY 2004.[72] The LEV II amendments restructure the light-duty truck category so that trucks with gross vehicle weight rating of 8,500 pounds or lower are subject to the same low-emission vehicle standards as passenger cars. LEV II requirements also include more stringent emission standards for passenger car and light-duty truck LEVs and ultra low emission vehicles (ULEVs), and establish a four-year phase-in requirement that begins in 2004.

The agency notes that compliance with increased emission requirements is most often achieved through more sophisticated combustion management. The improvements and refinement in engine controls to achieve this end generally improve fuel economy.

In summary, the agency believes there will be no impact from emissions standards on light truck fuel economy between the baseline MY 2007 and MY 2010 fleets.

C. Impacts on Manufacturers' Baselines

Based on NHTSA weight versus fuel economy algorithms, a 3–4 pound increase in weight equates to 0.01 mpg fuel economy penalty. Thus, the agency's estimate of the safety weight effects are 0.01 mpg or more for required additions and 0.03 mpg or more for voluntary safety improvements for a total of 0.04 mpg or more.

However, the agency is not certain whether the additional weight associated with the FMVSSs that will (or may) take effect between MY 2007 and 2008, as well as the weight associated with voluntary safety improvements, were incorporated into the manufacturers' product plans submitted to the agency. Such increases may have been reflected in the available data relied upon by the agency to supplement manufacturer submissions. Therefore, the agency seeks clarification on this point.

VIII. Need for Nation to Conserve Energy

EPCA specifically directs the Department to balance the technological and economic challenges with the nation's need to conserve energy. While EPCA grew out of the energy crisis of the 1970s, the United States still faces considerable energy challenges today. Increasingly, U.S. energy consumption has been outstripping U.S. energy production. This imbalance, if allowed to continue, will undermine our economy, our standard of living, and our national security. (May 2001 National Energy Policy (NEP) Overview, p. viii)

As was made clear in the first chapter of the NEP, efficient energy use and conservation are important elements of a comprehensive program to address the nation's current energy challenges:

> America's current energy challenges can be met with rapidly improving technology, dedicated leadership, and a comprehensive approach to our energy needs. Our challenge is clear—we must use technology to reduce demand for energy, repair and maintain our energy infrastructure, and increase energy supply. Today, the United States remains the world's undisputed technological leader: but recent events have demonstrated that we have yet to integrate 21st-century technology into an energy plan that is focused on wise energy use, production, efficiency, and conservation.

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The concerns about energy security and the effects of energy prices and supply on national economic well-being that led to the enactment of EPCA persist today. The demand for petroleum is steadily growing in the U.S. and around the world.

The Energy Information Administration's International Energy Outlook 2005 (IEO2005)[73] and Annual Energy Outlook (2005) (AEO2005) indicate growing demand for petroleum in the U.S. and around the world. U.S. demand for oil is expected to increase from 20 million barrels per day in 2003 to 28 million barrels per day in 2025. In the IEO2005 reference case, world oil demand increases through 2025 at a rate of 1.9 percent annually, from 78 million barrels per day in 2002 to 119 million barrels per day in 2025. Fifty-nine percent of the increase in world demand is projected to occur in the North

[71] See, U.S. EPA, Tire 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements: Response to Comments, EPA420–R–99–024, December 20, 1999, pp. 26–11 and 26–12.

[72] Title 13, California Code of Regulations §§ 1900, 1956.8, 1960.1, 1960.5, 1961, 1962, 1962.1, 1965, 1976, 1978, 2062, and 2101.

[73] See *http://www.eia.doe.gov/oiaf/ieo/pdf/0484(2005).pdf.*

America and emerging Asia. Most (61 percent) of the worldwide increases would occur in the transportation sector.[74]

To meet this projected increase in demand, worldwide productive capacity would have to increase by more than 42 million barrels per day over current levels. OPEC producers are expected to supply 60 percent of the increased production. In contrast, U.S. crude oil production is projected to increase from 5.7 million barrels per day in 2003 to 6.2 million in 2009, and then begin declining in 2010, falling to 4.7 million barrels per day in 2025. By 2025, nearly 70 percent of the oil consumed in the U.S. would be imported oil.

Energy is an essential input to the U.S. economy and having a strong economy is essential to maintaining and strengthening our national security. Secure, reliable, and affordable energy sources are fundamental to economic stability and development. Rising energy demand poses a challenge to energy security given increased reliance on global energy markets. As noted above, U.S. energy consumption has increasingly been outstripping U.S. energy production. Conserving energy, especially reducing the nation's dependence on petroleum, benefits the U.S. in several ways. Improving energy efficiency has benefits for economic growth and the environment as well as other benefits such reducing pollution and improving security of energy supply. More specifically, reducing total petroleum use decreases our economy's vulnerability to oil price shocks. Reducing dependence on oil imports from regions with uncertain conditions enhances our energy security and can reduce the flow of oil profits to certain states now hostile to the U.S. Reducing the growth rate of oil use will help relieve pressures on already strained domestic refinery capacity, decreasing the likelihood of product price volatility.

We believe that the continued development of advanced technology, such as fuel cell technology, and an infrastructure to support it, may help in the long term to achieve reductions in foreign oil dependence and stability in the world oil market. The continued infusion of advanced diesels and hybrid propulsion vehicles into the U.S. light truck fleet may also contribute to reduced dependence on petroleum. In the shorter term, our Reformed CAFE proposal would encourage broader use of fuel saving technologies, resulting in more fuel-efficient vehicles and greater overall fuel economy.

We have concluded that the proposed increases in the light truck CAFE standards would contribute appropriately to energy conservation and the comprehensive energy program set forth in the NEP. In assessing the impact of the standards, we accounted for the increased vehicle mileage that accompanies reduced costs to consumers associated with greater fuel economy and have concluded that the final rule will lead to considerable fuel savings. While increasing fuel economy without increasing the cost of fuel will lead to some additional vehicle travel, the overall impact on fuel conservation remains decidedly positive.

We acknowledge that, despite the CAFE program, the United States' dependence on foreign oil and petroleum consumption has increased in recent years. Nonetheless, data suggest that past fuel economy increases have had a major impact on U.S. petroleum use. The NAS determined that if the fuel economy of the vehicle fleet had not improved since the 1970s, the U.S. gasoline consumption and oil imports would be about 2.8 million barrels per day higher than they are today. Increasing fuel economy by 10 percent would produce an estimated 8 percent reduction in fuel consumption. Increases in the fuel economy of new vehicles eventually raise the fuel economy of all vehicles as older cars and trucks are scrapped.

Further, we do not believe that the increases in the light truck CAFE standards applicable to MYs 2008–2011 would unduly lead to so-called ''energy waste.'' This theory, presented in public comments during the rulemaking on the MY 2005–07 light truck standards, rests on the notion that efforts to reduce energy use can result in negative economic effects from losses in product values, profits and worker incomes. As discussed above, the agency believes that the CAFE standards could be achieved without significant adverse economic or safety consequences. Within the bounds of technological feasibility and economic practicability, the proposed standards would, in fact, enhance ''energy efficiency'' without significant adverse ancillary effects.

Our analysis in the Environmental Assessment indicates that proposed Reformed standards will result in an estimated 37.4 million metric tons of avoided greenhouse gas emissions (expressed in carbon equivalents) over the lifetime of the vehicles. They will further reduce the greenhouse gas emissions intensity of the transportation sector of the national economy, consistent with the President's overall climate change policies. In the past, NHTSA has received comments regarding the monetary value of the benefit of avoided greenhouse gas emissions. However, NHTSA has not monetized greenhouse gas reduction benefits in this rule, given the scientific and economic uncertainties associated with developing a proper estimation of avoided costs due to climate change. We invite comments on this approach.

IX. Applicability of the CAFE Standards

A. MDPVs

In the 2003 ANPRM, the agency sought comment on whether to extend the applicability of the CAFE program to include vehicles with a GVWR between 8,500 lb. and 10,000 lb., especially those that are defined by the EPA as medium duty passenger vehicles (MDPVs).[75] Under EPCA, the agency can regulate vehicles with a GVWR between 6,000 lb. and 10,000 lb. under CAFE if we determine that (1) Standards are feasible for these vehicles, and (2) either that these vehicles are used for the same purpose as vehicles rated at not more than 6,000 GVWR, or that their regulation will result in significant energy conservation. The MDPV category includes vehicles with a GVWR greater than 8,500 lb but less than 10,000 lb. and that were designed primarily to transport passengers, *i.e.*, large vans and SUVs.

In preparing the NPRM, the agency analyzed the feasibility of including MDPVs and the impact of their

[74] U.S. oil use has become increasingly concentrated in the transportation sector. In 1973, the U.S. transportation sector accounted for 51 percent of total U.S. petroleum use (8.4 of 16.5 million barrels per day (mmbd)). By 2003, transportation's share of U.S. oil had increased to 66 percent (13.2 out of 20.0 mmbd). (USDOE/EIA, Monthly Energy Review, April 2005, Table 11.2) Energy demand for transportation is projected to grow by over 67 percent between 2003 and 2025. (USDOE/EIA, Annual Energy Outlook (Report # DOE/EIA–0383), January 2005) Demand for light-duty vehicle fuels is projected to increase at a similar pace. (Id.)

[75] EPA defines these vehicles as follows:

Medium-duty passenger vehicle (MDPV) means any heavy-duty vehicle (as defined in this subpart) with a gross vehicle weight rating (GVWR) of less than 10,000 pounds that is designed primarily for the transportation of persons. The MDPV definition does not include any vehicle which:

(1) Is an ''incomplete truck'' as defined in this subpart; or

(2) Has a seating capacity of more than 12 persons; or

(3) is designed for more than 9 persons in seating rearward of the driver's seat; or

(4) Is equipped with an open cargo area (for example, a pick-up truck box or bed) of 72.0 inches in interior length or more. A covered box not readily accessible from the passenger compartment will be considered an open cargo area for purposes of this definition.

(40 CFR § 86.1803–01.)

inclusion on the fuel savings of the CAFE standards. The agency believes that fuel economy technologies applicable to vehicles with a GVWR below 8,500 lb. might be applicable to MDPVs, *e.g.*, low-friction lubricants and cylinder deactivation. MDPVs are already required by EPA to undergo a portion of the testing necessary to determine fuel economy performance under the CAFE program. See, 40 CFR Part 600 Subpart F. If MDPVs were included in the CAFE standards, manufacturers would be able to rely on this testing to generate a portion of the data necessary to determine fuel economy performance. A similar test procedure could be used to generate the remaining necessary data. Accordingly, we do not believe that, if MDPVs were included in the CAFE program, meeting the additional testing requirements would be burdensome.

The agency's analysis of the impact of including MDPVs on fuel savings indicated that their inclusion in MYs 2008–2010 would lead to a net loss of industry-wide fuel savings. Under the Unreformed CAFE structure, maximum feasible standards are set with particular consideration given to the least capable manufacturer, which has been determined to be General Motors for this proposed rule. Almost all of the MDPVs are produced by General Motors and, due to their weight, have very low fuel economy. The inclusion of these vehicles would lead to greater fuel savings by General Motors, but less by the other manufacturers. This would occur because the addition of the low fuel economy MDPVs in MYs 2008–2010 would depress the level of General Motors' CAFE and therefore depress the level of the Unreformed CAFE standards. We calculate that the Unreformed CAFE standards for MYs 2008–2010 would be 0.3 mpg lower if MDPVs were included in those years. This would affect not only General Motors, but also some other manufacturers. Since the MY 2008–2010 Reformed CAFE standards would be set so as to roughly equalize industry-wide costs with the MY 2008–2010 Unreformed CAFE standards, depressing the Unreformed CAFE standards for MYs 2008–2010 would also depress the Reformed CAFE standards for those years. The net effect of including MDPVs in the MY 2008–2010 Reformed CAFE standards would be a reduction in overall fuel savings of almost 1.1 billion gallons.

The agency seeks comment on whether MDPVs should be included in final rule for MY 2011. If the agency were to include MDPVs, we would adopt essentially the EPA definition of ''medium duty passenger vehicles.'' Inclusion of MDPVs in the MY 2011 Reformed CAFE standard could save an additional 0.5 billion gallons of fuels. The associated costs are $200 million with a per vehicle cost ranging from $900 to $2800 per vehicle. Based on the product plans received, the compliance costs would be borne primarily by one manufacturer. The agency seeks comments on the merits of subjecting these vehicles to the MY 2011 standard.

If we do not regulate MDPVs, manufacturers could very well decide, nevertheless, to install fuel-efficient technologies in their MDPVs as they become more widely used in their non-MDPV fleet, and thereby less expensive, in order to improve market demand for their vehicles. The agency invites comment on whether ways, other than inclusion of 8,500–10,000 lb GVWR light trucks in the CAFE standards, can be found in EPCA to encourage the making of improvements in fuel economy of those vehicles. Can the agency create mechanisms by which manufacturers who improve the fuel economy of those vehicles can receive credit toward compliance with the light truck CAFE standards? The provisions in EPCA regarding credits for light trucks are less precise than those relating to passenger cars, although EPCA does provide that credits for light trucks are to be earned in the same way as credits for cars are earned. If the agency can create such mechanisms, what requirements and limitations should the agency establish? For example, in the absence of an applicable standard, what reference level of CAFE could be used to determine the amount of credit earned by a manufacturer?

B. ''Flat-Floor'' Provision

The agency has tentatively decided to amend the ''flat floor provision'' in the light truck definition (49 CFR 523.5) to include expressly vehicles with seats that fold and stow in a vehicle's floor pan. The agency has tentatively determined that these seats are functionally equivalent to removable seats and minimize safety concerns that arise from the potential of improperly re-installed seats.

The current regulation classifies as a light truck any vehicle with readily removable seats that, once removed, leave a flat, floor-level surface extending from the forward most removable seat mount to the rear of the vehicle (the flat floor provision). The flat floor provision originally was based on the agency's determination that passenger vans with removable seats and a flat load floor were derived from cargo vans (42 FR 38367; July 28, 1977) and should be classified as trucks. Because these passenger vans were derived from cargo vans, the agency distinguished them from station wagons—which also had large flat areas with their seats folded—and were based on a car chassis.

Currently, the vast majority of vehicles equipped with stowable seats are minivans, which tend not to be based on car chassis and typically perform very well in crash rating tests. The stowing of such seats results in a flat, floor-level surface comparable to that if the seats were removed. The cargo space created is functionally equivalent between the stowable and removable seats.

Moreover, removable seats are heavy and cumbersome. The agency recognizes that consumers could injure themselves while removing and reinstalling these seats. Additionally, if the seats are improperly re-installed, the seats and related occupant crash protection systems may not provide the necessary protection in a collision. Stowable seats minimize this concern.

The agency has tentatively determined that by including stowable seats in the flat floor provision, we would facilitate the production of vehicles that achieve high safety ratings, that have a degree of consumer preference, and that minimize safety risks from improper reinstallation/redeployment. The primary effect of this amendment would be on the design of seating in mini-vans, which have traditionally been classified as light trucks. With the adoption of this amendment, mini-vans would be treated as light trucks regardless of whether they have removable or fold down seating.

X. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rulemaking proposed in this NPRM will be economically significant if adopted. Accordingly, OMB reviewed it under Executive Order 12866. The rule, if adopted, would also be significant within the meaning of the Department of Transportation's Regulatory Policies and Procedures.

We estimate that the total benefits under the Unreformed CAFE standards for MYs 2008–2010 and the Reformed CAFE standard for MY 2011 would be approximately $7.0 billion at a 7 percent discount rate and at fuel prices ranging from $1.51 to $1.58 per gallon: $605 million for MY 2008, $1,366 million for MY 2009, $2,007 million for MY 2010, and $3,069 million for MY 2011. We estimate that the total cost under those standards, as compared to the MY 2007 standard of 22.2 mpg, would be a total of $6.2 billion: $528 million for MY 2008, $1,244 million for MY 2009, $1,798 million for MY 2010, and $2,656 million for MY 2011.

Under the Reformed CAFE standards for MYs 2008–2011, as compared to the MY 2007 standard of 22.2 mpg, we estimate the total benefits under the Reformed CAFE system for MYs 2008–2011 at $7.5 billion, at a 7 percent discount rate and at fuel prices ranging from $1.51 to $1.58 per gallon: $694 million for MY 2008, $1,633 million for MY 2009, $2,144 million for MY 2010, and $3,069 million for MY 2011. We estimate the total cost to be approximately the same as the cost under the Unreformed CAFE system, $6.2 billion.

Because the proposed rule if adopted would be significant under both the Department of Transportation's procedures and OMB's guidelines, the agency has prepared a Preliminary Regulatory Impact Analysis and placed it in the docket and on the agency's Web site.

B. National Environmental Policy Act

Consistent with the requirements of the National Environmental Policy Act and the regulations of the Council on Environmental Quality, the agency has prepared a Draft Environmental Assessment of this proposed action, and has placed the analysis in the docket. Based on the Draft Environmental Assessment, the agency does not, at this time, anticipate that the proposed action would have a significant effect on the quality of the human environment. The agency seeks comments on the Draft Environmental Assessment.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)).

If adopted, the proposal would directly affect thirteen single stage light truck manufacturers. According to the Small Business Administration's small business size standards (see 5 CFR 121.201), a single stage light truck manufacturer (NAICS code 336112, Light Truck and Utility Vehicle Manufacturing) must have 1,000 or fewer employees to qualify as a small business. None of the affected single stage light truck manufacturers are small businesses under this definition. All of the manufacturers of light trucks have thousands of employees. Given that none of the businesses directly affected are small business for purposes of the Regulatory Flexibility Act, a regulatory flexibility analysis was not prepared.

D. Executive Order 13132 Federalism

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Executive Order 13132 defines the term ''Policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

We reaffirm our view that a state may not impose a legal requirement relating to fuel economy, whether by statute, regulation or otherwise, that conflicts with this rule. A state law that seeks to reduce motor vehicle carbon dioxide emissions is both expressly and impliedly preempted.

Our statute contains a broad preemption provision making clear the need for a uniform, federal system: ''When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.'' 49 U.S.C. 32919(a). Since the way to reduce carbon dioxide emissions is to improve fuel economy, a state regulation seeking to reduce those emissions is a ''regulation related to fuel economy standards or average fuel economy standards.''

Further, such a regulation would be impliedly preempted, as it would interfere with our implementation of the CAFE statute. For example, it would interfere the careful balancing of various statutory factors and other related considerations, as contemplated in the conference report on EPCA, we must do in order to establish average fuel economy standards at the maximum feasible level. It would also interfere with our effort to reform CAFE so to achieve higher fuel savings, while reducing the risk of adverse economic and safety consequences.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This final rule does not have any retroactive effect.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA 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 NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, of more than $100 million annually, but it will result in the expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In promulgating this proposal, NHTSA considered whether average fuel economy standards lower and higher than those proposed would be appropriate. NHTSA is statutorily required to set standards at the maximum feasible level achievable by manufacturers and has tentatively concluded that the proposed standards are the maximum feasible standards for the light truck fleet for MYs 2008–2011 in light of the statutory considerations.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The proposed rule would amend the reporting requirements under the 49 CFR part 537, Automotive Fuel Economy Reports. In addition to the vehicle model information collected under the approved data collection (OMB control number 2127–0019) in Part 537, light truck manufacturers would also be required provide data on vehicle footprint. During the transition period, manufacturers would also be required to specify with which CAFE system they were complying.

In compliance with the PRA, we announce that NHTSA is seeking comment on the proposed revisions to the collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR part 537, Automotive Fuel Economy Reports (F.E.) Reports.

Type of Request: Amend existing collection.

OMB Clearance Number: 2127–0019.

Form Number: This collection of information will not use any standard forms.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information

For MYs 2008–2010, we are proposing to provide manufacturers an option to comply with one of two CAFE systems. A manufacturer would be required to report under which system it chose to comply during those years. Manufacturers complying under the Reformed CAFE system would also be required to provide data on vehicle footprint so that the agency could determine a manufacturer's required fuel economy level.

This information collection would be included as part of the existing fuel economy reporting requirements.

Description of the Need for the Information and Proposed Use of the Information

NHTSA would require this information to ensure that vehicle manufacturers were complying with the light truck fuel economy standards. NHTSA would use this information to determine if a manufacturer's fuel economy level should be calculated under the Unreformed or Reformed CAFE system. NHTSA would use the footprint data to determine a manufacturer's required fuel economy level under the Reformed CAFE system.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that 13 light truck manufacturers would submit the required information. The frequency of reporting would not change from that currently authorized under collection number 2127–0019.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information

NHTSA estimates that each manufacturer will incur an increase of two burden hours per year per report. This estimate is based on the fact that data collection will involve only computer tabulation and that manufacturers will provide the information to NHTSA in an electronic (as opposed to paper) format.

NHTSA estimates that the recordkeeping burden resulting from the collection of information will be 0 hours because the information will be retained on each manufacturer's existing computer systems for each manufacturer's internal administrative purposes.

NHTSA estimates that the total annual cost burden would be increased by 551.58 dollars (2 additional burden hours per light truck manufacturer x 13 light truck manufacturers × 21.23 dollars/hour). There would be no capital or start-up costs as a result of this collection. Manufacturers can collect and tabulate the information by using existing equipment. Thus, there would be no additional costs to respondents or recordkeepers.

NHTSA requests comment on its estimates of the total annual hour and cost burdens resulting from this collection of information. Please submit any comments to the NHTSA Docket Number referenced in the heading of this notice or to: Ken Katz, Lead Engineer, Fuel Economy Division, Office of International Policy, Fuel Economy, and Consumer Programs, at 400 Seventh Street, SW., Washington, DC 20590. He can also be contacted by phone, (202) 366–0846; facsimile (202) 493–2290; and electronic mail, *kkatz@nhtsa.dot.gov*. Comments are due by October 31, 2005.

H. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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 us.

This proposed rule does not have a disproportionate effect on children. The primary effect of this proposal is to conserve energy resources by setting fuel economy standards for light trucks.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

In meeting the requirement of the NTTAA, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The notice proposes to categorize light trucks according to vehicle footprint (average track width X wheelbase). For the purpose of this calculation, the agency proposes to base these measurements on those by the automotive industry. Determination of wheelbase would be consistent with L101-wheelbase, defined in SAE J1100 MAY95, Motor vehicle dimensions. The agency's proposal uses a modified version of the SAE definitions for track width (W101-tread-front and W102-tread-rear as defined in SAE J1100 MAY95). The proposed definition of track width reduces a manufacturer's ability to adjust a vehicle's track width through minor alterations.

K. Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the planned rule and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

The proposed rule seeks to establish light truck fuel economy standards that will reduce the consumption of petroleum and will not have any adverse energy effects. Accordingly, this rulemaking action is not designated as a significant energy action.

L. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this proposed rule to the Department of Energy for review. That Department did not make any comments that we have not addressed.

M. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

N. Privacy Act

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

XI. Comments

Submission of Comments

How Can I Influence NHTSA's Thinking on This Notice?

In developing this notice, we tried to address the concerns of all our stakeholders. Your comments will help us determine what standards should be set for light truck fuel economy. We invite you to provide different views on questions we ask, new approaches and technologies we did not ask about, new data, how this notice may affect you, or other relevant information. We welcome your views on all aspects of this notice, but request comments on specific issues throughout this notice. We grouped these specific requests near the end of the sections in which we discuss the relevant issues. Your comments will be most effective if you follow the suggestions below:

- Explain your views and reasoning as clearly as possible.
- Provide empirical evidence, wherever possible, to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the notice, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number of the proceeding with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on

''Help'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. Each electronic filer will receive electronic confirmation that his or her submission has been received.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all timely submitted comments, *i.e.*, those that Docket Management receives before the close of business on the comment closing date indicated above under DATES. Due to the statutory deadline (April 1, 2006), we will be very limited in our ability to consider late-filled comments. If Docket Management receives a comment too late for us to consider it in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the five-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2002–12345,'' you would type ''12345.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Parts 523, 533, and 537

Fuel economy and Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter V would be amended as follows:

PART 523—VEHICLE CLASSIFICATION

1. The authority citation for part 523 would continue to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. Section 523.2 would be amended by adding a definition of ''footprint'' to read as follows:

§ 523.2 Definitions.

* * *

Footprint means the product, in square feet, of multiplying a vehicle's average track width by its wheelbase. For purposes of this definition, track width is the lateral distance between the centerlines of the tires at ground when the tires are mounted on rims with zero offset. For purposes of this definition, wheelbase is the longitudinal distance between front and rear wheel centerlines. In case of multiple rear axles, wheelbase is measured to the midpoint of the centerlines of the wheels on the rearmost axle.

* * * * *

3. Section 523.5(a) would be amended to read as follows:

§ 523.5 Light truck.

* * * * *

(a) * * *

(5) Permit expanded use of the automobile for cargo-carrying purposes or other nonpassenger-carrying purposes through:

(i) The removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level, surface extending from the forwardmost point of installation of those seats to the rear of the automobile's interior; or

(ii) The stowing of foldable seats in the automobile's floor pan, so as to create a flat, floor level, surface extending from the forwardmost point of installation of those seats to the rear of the automobile's interior.

* * * * *

PART 533—LIGHT TRUCK FUEL ECONOMY STANDARDS

4. The authority citation for part 533 would continue to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

5. Part 533.5 would be amended by:

A. In paragraph (a) by revising Table IV and adding Figure I and Table V; and

B. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
2001	20.7
2002	20.7
2003	20.7
2004	20.7
2005	21.0
2006	21.6
2007	22.2
2008	22.5
2009	23.1
2010	23.5

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Figure 1

MANUFACTURER'S REQUIRED FUEL ECONOMY LEVEL

Manufacturer's Light Truck Production for Applicable Model Year

$$\frac{\text{Category 1 Production Level}}{\text{Category 1 Target}} + \frac{\text{Category 2 Production Level}}{\text{Category 2 Target}} + \frac{\text{Category 3 Production Level}}{\text{Category 3 Target}} + \frac{\text{Category 4 Production Level}}{\text{Category 4 Target}} + \frac{\text{Category 5 Production Level}}{\text{Category 5 Target}} + \frac{\text{Category 6 Production Level}}{\text{Category 6 Target}}$$

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TABLE V.—CATEGORIES FOR MYS 2008–2011 BASED ON VEHICLE FOOTPRINT (FOOT^2) AND THE ASSOCIATED TARGET FUEL ECONOMY LEVELS (MPG)

Category	1	2	3	4	5	6
Range of vehicle footprint	≤43.0	>43.0–47.0	>47.0–52.0	>52.0–56.5	>56.5–65.0	>65.0
MY 2008 Targets	26.8	25.6	22.3	22.2	20.7	20.4
MY 2009 Targets	27.4	25.4	23.5	22.7	21.0	21.0
MY 2010 Targets	27.8	26.4	24.0	22.9	21.6	20.8
MY 2011 Targets	28.4	27.1	24.5	23.3	21.9	21.3

* * * * *

(g) For model years 2008–2010, at a manufacturer's option, a manufacturer's light truck fleet may comply with the fuel economy level calculated according to Figure I and the appropriate values in Table V, with said option being irrevocably chosen for that model year and reported at the time a mid-model year report is submitted under § 537.7.

(h) For model year 2011, a manufacturer's light truck fleet shall comply with the fuel economy level, calculated according to Figure I and the appropriate values in Figures V and VI.

5a. Part 533 would be amended by adding Appendix A to read as follows:

Appendix A—Example of Calculating Compliance Under § 533.5 Paragraph (g)

Assume a hypothetical manufacturer (Manufacturer X) produces a fleet of light trucks in MY 2008 as follows:

Model	Fuel economy	Volume	Footprint (ft^2)	Category
A	27.0	1,000	42	1
B	25.6	1,500	44	2
C	25.4	1,000	46	2
D	22.1	2,000	50	3
E	22.4	3,000	55	4
F	20.2	1,000	66	6

Note to Appendix A Table 1. Manufacturer X's required corporate average fuel economy level under § 533.5(g) would be calculated as illustrated in Appendix A Figure 1:

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APPENDIX A FIGURE 1

Manufacturer X's Light Truck Production for Model Year 2008

$$= \frac{9{,}500}{\frac{1{,}000}{26.8} + \frac{2{,}500}{25.6} + \frac{2{,}000}{22.3} + \frac{3{,}000}{22.2} + \frac{1{,}000}{20.4}}$$

Model A Production Level Category 1 Target + Models B and C Production Level Category 2 Target + Model D Production Level Category 3 Target + Model E Production Level Category 4 Target + Model F Production Level Category 5 Target

= 23.2 mpg

Note to Appendix A Figure 1. Manufacturer X did not produce any light trucks in Category 5 during MY 2005. Therefore calculation of Manufacturer X's required

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corporate average fuel economy level for MY 2008 would only incorporate the fuel economy target levels for Categories 1, 2, 3, 4, and 6.

Manufacturer X's actual CAFE level would be calculated as illustrated in Appendix A Figure 2.

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Appendix A Figure 2

Manufacturer's Light Truck Production for Applicable Model Year

$$\frac{\text{Model A Production Level}}{\text{Model A Fuel Economy}} + \frac{\text{Model B Production Level}}{\text{Model B Fuel Economy}} + \frac{\text{Model C Production Level}}{\text{Model C Fuel Economy}} + \frac{\text{Model D Production Level}}{\text{Model D Fuel Economy}} + \frac{\text{Model E Production Level}}{\text{Model E Fuel Economy}} + \frac{\text{Model F Production Level}}{\text{Model F Fuel Economy}}$$

$$= \frac{9{,}500}{\frac{1{,}000}{27.0} + \frac{1{,}500}{25.6} + \frac{1{,}000}{25.4} + \frac{2{,}000}{22.1} + \frac{3{,}000}{22.4} + \frac{1{,}000}{20.2}}$$

$$= 23.2 \text{ mpg}$$

Note to Appendix A Figure 2. Manufacturer X's required fuel economy level is 23.2 mpg. Its actual fuel economy level is 23.2 mpg.

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Therefore, Manufacturer X complies with the CAFE requirement set forth in § 533.7(g).

PART 537—AUTOMOTIVE FUEL ECONOMY REPORTS

6. The authority citation for Part 537 would continue to read as follows:

Authority: 15 U.S.C. 2005; 49 CFR 1.50.

7. Section 537.7 would be amended by revising paragraphs (c)(4)(xvi) through (xxi) to read as follows:

§ 537.7 Pre-model year and mid-model year reports.

* * * * *

(c) *Model type and configuration fuel economy and technical information.*

* * *

(4) * * *

(xvi)(A) In the case of passenger automobiles:

(*1*) Interior volume index, determined in accordance with subpart D of 40 CFR part 600, and

(*2*) Body style;

(B) In the case of light trucks:

(*1*) Passenger-carrying volume,

(*2*) Cargo-carrying volume; and

(*3*) Footprint as defined in 49 CFR § 523.2.

(xvii) Performance of the function described in § 523.5(a)(5) of this chapter (indicate yes or no);

(xviii) Existence of temporary living quarters (indicate yes or no);

(xix) Frontal area;

(xx) Road load power at 50 miles per hour, if determined by the manufacturer for purposes other than compliance with this part to differ from the road load setting prescribed in 40 CFR 86.177–11(d);

(xxi) Optional equipment that the manufacturer is required under 40 CFR parts 86 and 600 to have actually installed on the vehicle configuration, or the weight of which must be included in the curb weight computation for the vehicle configuration, for fuel economy testing purposes.

* * * * *

Issued: August 23, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–17006 Filed 8–24–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 2005–22144]

RIN 2127–AJ71

Light Truck Average Fuel Economy Standards—Model Years 2008–2011; Request for Product Plan Information

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

ACTION: Request for comments.

SUMMARY: The purpose of this request for comments is to acquire new and updated information regarding vehicle manufacturers' future product plans to assist the agency in analyzing the proposed light truck corporate average fuel economy (CAFE) standards for MY 2008–2011, which are discussed in a companion document published elsewhere in this issue of the **Federal Register**. The agency is seeking information that will help it assess the effect of the proposed standards on fuel economy, manufacturers, consumers, the economy, and motor vehicle safety.

DATE: Comments must be received on or before November 22, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number 2005–22144] 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 20590–001.
- 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Ken Katz, Lead Engineer, Fuel Economy Division, Office of International Policy, Fuel Economy and Consumer Programs, at (202) 366–0846, facsimile (202) 493–2290, electronic mail *kkatz@nhtsa.dot.gov*. For legal issues, call Steve Wood or Christopher Calamita, Office of the Chief Counsel, at (202) 366–2992 or by facsimile at (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Introduction

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act (EPCA). The Act established an automotive fuel economy regulatory program by adding Title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Saving Act. Title V has been amended from time to time and codified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that ''[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year.'' (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that, in determining the maximum feasible average fuel economy level, we shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.

In a companion document, a notice of proposed rulemaking, published elsewhere in this issue of the **Federal Register**, NHTSA is proposing light truck average fuel economy standards for model years (MYs) 2008–2011 under a new reformed structure. To assist the agency in analyzing these proposed CAFE standards, NHTSA has included a number of additional questions, found in an appendix to this notice, directed primarily toward vehicle manufacturers.

To facilitate our analysis of the potential impacts of the proposal, we are seeking detailed comments relative to the requests found in the appendix of this document. The Appendix requests information from manufacturers regarding their product plans—including data about engines and transmissions—MY 2005 through MY

2012, and the assumptions underlying those plans. The Appendix also asks for estimates of the future vehicle population and the fuel economy improvement attributed to technologies.

To facilitate comments and to ensure the conformity of data received regarding manufacturers' product plans from MY 2005 through MY 2012, NHTSA has developed spreadsheet templates for manufacturers' use. The uniformity provided by these spreadsheets is intended to aid and expedite our review of the information provided. These templates are the preferred format for data submittal, and can be found under the CAFE heading of the Laws and Regulations section of the NHTSA Web site (*www.nhtsa.dot.gov*). The Appendix also includes sample tables that manufacturers may refer to when submitting their data to the Agency.

For those manufacturers that submitted information to the previous request for product plan information (68 FR 74931, December 29, 2003; Docket No 16709), the agency will be providing spreadsheet files containing each manufacturer's confidential data directly to each manufacturer. The agency requests that manufacturers utilize these files when providing revised plans. Manufacturers that didn't supply the agency with product plan data in response to the previous request for product plan information are asked to use these templates for their data submission.

Additionally, the agency has placed in the docket for this notice a 2005 document, prepared under the auspices of the Department of Energy (DOE) for NHTSA, updating the estimates of light-truck fuel economy potential and costs in the 2001 NAS report, ''Effectiveness and Import of Corporate Average Fuel Economy (CAFE) Standards.'' The agency seeks comments on this document. After having this document peer reviewed, the agency will place the peer reviewers' reports in the docket for public comment.

We note that the introduction of the 2005 DOE document states that that document does not address the costs and benefits of hybrid and diesel technology because these matters have been documented in a 2004 Energy and Environmental Analysis, Inc. (EEA) study for the DOE. The title of that study is ''Future Potential of Hybrid and Diesel Powertrains in the U.S. Light-Duty Vehicle Market.'' [1] The agency has placed that study in the docket and seeks comments on it as well.

II. Comments

Submission of Comments

How Can I Influence NHTSA's Thinking on This Notice?

In developing the notice of proposed rulemaking for MY 2008–2011 light truck standards, we tried to address the concerns of all our stakeholders. Your comments will help us determine what standards should be set for light truck fuel economy. We welcome your views on all aspects of this notice, but request comments on specific issues throughout this notice. Your comments will be most effective if you follow the suggestions below:

—Explain your views and reasoning as clearly as possible.

—Provide empirical evidence, wherever possible, to support your views.

—If you estimate potential costs, explain how you arrived at the estimate.

—Provide specific examples to illustrate your concerns.

—Offer specific alternatives.

—Refer your comments to specific sections of the notice, such as the units or page numbers of the preamble, or the regulatory sections.

—Be sure to include the name, date, and docket number of the proceeding with your comments.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (*49 CFR 553.21*). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov*. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** Due to the statutory deadline (April 1, 2006), we will be very limited in our ability to consider comments filed after the comment closing date. If Docket Management receives a comment too late for us to consider it in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/searchFormSimple.cfm*), type in the

[1] See *http://www-cta.ornl.gov/cta/Publications/pdf/ORNL_TM_2004_181_HybridDiesel.pdf.*

four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Accordingly, we recommend that you periodically check the Docket for new material.

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

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

Issued on: August 23, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

APPENDIX

I. Definitions

As used in this appendix—

1. ''Automobile,'' ''fuel economy,'' ''manufacturer,'' and ''model year,'' have the meaning given them in Section 32901 of Chapter 329 of Title 49 of the United States Code, 49 U.S.C. 32901.

2. ''Cargo-carrying volume,'' ''gross vehicle weight rating'' (GVWR), and ''passenger-carrying volume'' are used as defined in 49 CFR 523.2.

3. ''Basic engine'' has the meaning given in 40 CFR 600.002–85(a)(21). When identifying a basic engine, respondent should provide the following information:

(i) Engine displacement (in liters). If the engine has variable displacement (i.e., cylinder deactivation) the respondent should provide both the minimum and maximum engine displacement.

(ii) Number of cylinders or rotors.

(iii) Number of valves per cylinder.

(iv) Cylinder configuration (V, in-line, etc.).

(v) Other engine characteristics, abbreviated as follows:

A—Atkinson cycle
AM—Atkinson/Miller cycle
D—Diesel cycle
M—Miller cycle
O—Otto cycle
OA—Otto/Atkinson cycle
V—V-shaped
I—Inline
R—Rotary
DI—Direct injection
IDI—Indirect injection
MPFI—Multipoint fuel injection
PFI—Port fuel injection
SEFI—Sequential electronic fuel injection
TBI—Throttle body fuel injection
NA—Naturally aspirated
T—Turbocharged
S—Supercharged
FFS—Feedback fuel system
2C—Two-stroke engines
C—Camless
OHV—Overhead valve
SOHC—Single overhead camshaft
DOHC—Dual overhead camshafts
VVT—Variable valve timing
VVLT—Variable valve lift and timing
CYDA—Cylinder deactivation
IVT—Intake valve throttling
CVA—Camless valve actuation
VCR—Variable compression ratio
LBFB—lean burn-fast burn combustion
DCL—Dual cam lobes
E—Exhaust continuous phasing
EIE—Equal continuous intake and exhaust phasing
ICP—Intake continuous phasing
IIE—Independent continuous intake and exhaust
CV—Continuously variable valve lift
F—Fixed valve lift
SVI—Stepped variable intake with 2 or more fixed profiles
SVIE—Stepped variable intake and exhaust with 2 or more fixed profiles

4. ''Domestically manufactured'' is used as defined in Section 32904(b)(2) of Chapter 329, 49 U.S.C. 32904(b)(2).

5. ''Footprint'' means the product of a vehicle's wheelbase and average track width, presented in square feet. For purposes of this definition, track width is the lateral distance between the centerlines of the tires at ground when the tires are mounted on rims with zero offset. For purposes of this definition, wheelbase is the longitudinal distance between front and rear wheel centerlines. In case of multiple rear axles, wheelbase is measured to the midpoint of the centerlines of the wheels on the rearmost axle.

6. ''Light truck'' means an automobile of the type described in 49 CFR 523.3 and 523.5.

7. A ''model'' is a vehicle line, such as the Chevrolet Impala, Ford Taurus, Honda Accord, etc., which exists within a manufacturer's fleet.

8. ''Model Type'' is used as defined in 40 CFR 600.002–85(a)(19).

9. ''Percent fuel economy improvements'' means that percentage which corresponds to the amount by which respondent could improve the fuel economy of vehicles in a given model or class through the application of a specified technology, averaged over all vehicles of that model or in that class which feasibly could use the technology. Projections of percent fuel economy improvement should be based on the assumption of maximum efforts by respondent to achieve the highest possible fuel economy increase through the application of the technology. The baseline for determination of percent fuel economy improvement is the level of technology and vehicle performance with respect to acceleration and gradeability for respondent's 2005 model year vehicles in the equivalent class.

10. ''Percent production implementation rate'' means that percentage which corresponds to the maximum number of vehicles of a specified class, which could feasibly employ a given type of technology if respondent made maximum efforts to apply the technology by a specified model year.

11. ''Production percentage'' means the percent of respondent's vehicles of a specified model projected to be manufactured in a specified model year.

12. ''Project'' or ''projection'' refers to the best estimates made by respondent, whether or not based on less than certain information.

13. ''Redesign'' means any change, or combination of changes, to a vehicle that would change its weight by 50 pounds or more or change its frontal area or aerodynamic drag coefficient by 2 percent or more.

14. ''Relating to'' means constituting, defining, containing, explaining, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

15. ''Respondent'' means each manufacturer (including all its divisions) providing answers to the questions set forth in this appendix, and its officers, employees, agents or servants.

16. ''Test Weight'' is used as defined in 40 CFR 86.082–2.

17. ''Transmission class'' is used as defined in 40 CFR 600.002–85(a)(22). When identifying a transmission class, respondent also must indicate whether the type of transmission, and whether it is equipped with a lockup torque converter (LUTC), a split torque converter (STC), and/or a wide gear ratio range (WR) and specify the number of forward gears or whether the transmissions a continuously variable design (CVT). If the transmission is of a hybrid type, that should also be indicated.

18. ''Truckline'' means the name assigned by the Environmental Protection Agency to a different group of vehicles within a make or car division in accordance with that agency's 2001 model year pickup, van (cargo vans and passenger vans are considered separate truck lines), and special purpose vehicle criteria.

19. ''Variants of existing engines'' means versions of an existing basic engine that differ from that engine in terms of displacement, method of aspiration, induction system or that weigh at least 25 pounds more or less than that engine.

II. Assumptions

All assumptions concerning emission standards, damageability regulations, safety standards, etc., should be listed and described in detail by the respondent.

III. Specifications—Light Truck Data

Go to *www.nhtsa.dot.gov/cars/rules/CAFE/rulemaking.htm* for spreadsheet templates.

1. Identify all light truck models currently offered for sale in MY 2005 whose production you project discontinuing before MY 2008 and identify the last model year in which each will be offered.

2. Identify all basic engines offered by respondent in MY 2005 light trucks which respondent projects it will cease to offer for sale in light trucks before MY 2008, and identify the last model year in which each will be offered.

3. For each model year 2005–2012, list all projected trucklines and provide the information specified below for each model type. Model types that are essentially identical except for their nameplates (e.g., Chrysler Town & Country/Dodge Caravan) may be combined into one item. Engines having the same displacement but belonging to different engine families are to be grouped separately. Within the fleet, the vehicles are to be sorted first by truckline, second by basic engine, and third by transmission type. Spreadsheet templates can be found at *www.nhtsa.dot.gov/cars/rules/CAFE/rulemaking.htm*. These templates include codes and definitions for the data that the Agency is seeking.

a. General Information:

1. Number—a unique number assigned to each model

2. Manufacturer—manufacturer abbreviation (e.g., GMC)

3. Model—name of model (i.e., Escalade)

4. Nameplate—vehicle nameplate (i.e., Escalade ESV)

5. Fuel Economy—measured in miles per gallon; weighted (FTP + highway) fuel economy

6. Actual FE (FFVs)—measured in miles per gallon; for flexible fuel vehicles, fuel economy when vehicle is operated on gasoline

7. Engine Code—unique number assigned to each engine

A. Manufacturer—manufacturer abbreviation

B. Name—name of engine

C. Configuration—classified as V = V4, V6, V8, or V10; I = inline; R=rotary

D. Fuel—classified as CNG = compressed natural gas, D = diesel, E = electricity, E85 = ethanol flexible-fuel, E100 = neat ethanol, G = gasoline, H = hydrogen, LNG = liquefied natural gas, LPG = propane, M85 = methanol flexible-fuel, M100 = neat methanol

E. Engine's country of origin

F. Engine Oil Viscosity—typical values as text include 0W20, 5W20, etc.; ratio between the applied shear stress and the rate of shear, which measures the resistance of flow of the engine oil (as per SAE Glossary of Automotive Terms)

G. Cycle—combustion cycle of engine. Classified as A = Atkinson, AM = Atkinson/Miller, D = Diesel, M = Miller, O = Otto, OA = Otto/Atkinson

H. Air/Fuel Ratio—the weighted (FTP + highway) air/fuel ratio (mass): a number generally around 14.7

I. Fuel System—mechanism that delivers fuel to engine. Classified as DI = direct injection, IDI = indirect injection, MPFI = multipoint fuel injection, PFI = port fuel injection, SEFI = sequential electronic fuel injection, TBI = throttle body fuel injection

J. Aspiration—based on breathing or induction process of engine (as per SAE Automotive Dictionary). Classified as NA = naturally aspirated, S = supercharged, T = turbocharged

K. Valvetrain Design—describes design of the total mechanism from camshaft to valve of an engine that actuates the lifting and closing of a valve (as per SAE Glossary of Automotive Terms). Classified as C = camless, DOHC = dual overhead cam, OHV = overhead valve, SOHC = single overhead cam

L. Valve Actuation/Timing—based on valve opening and closing points in the operating cycle (as per SAE J604). Classified as CC=continuously controlled, EIE = equal continuous intake and exhaust phasing, DCL = dual cam lobes, E = exhaust continuous phasing, F = fixed, I = intake continuous phasing, IIE = independent continuous intake and exhaust phasing

M. Valve Lift—describes the manner in which the valve is raised during combustion (as per SAE Automotive Dictionary). Classified as CV = continuously variable (throttled), F = fixed, SVI = stepped variable intake with 2 or more fixed profiles, SVIE = stepped variable intake and exhaust with 2 or more fixed profiles

N. Cylinders—the number of engine cylinders. An integer equaling 3, 4, 5, 6, 8, or 10

O. Valves/Cylinder—the number of valves per cylinder. An integer equaling 2, 3, or 4

P. Deactivation—weighted (FTP + highway) aggregate degree of deactivation. Classified as Y= valve deactivation on half of the cylinders, N= no valve deactivation, 0.0-? (e.g., for deactivation of half the cylinders over half the drive cycle, enter 0.25)

Q. Displacement—total volume displaced by a piston in a single stroke, measured in liters

R. Compression Ratio (min)—typically a number around 8; for fixed CR engines, should be identical to maximum CR

S. Compression Ratio (max)—a number between 8 and 14; for fixed CR engines, should be identical to minimum CR

T. Horsepower—the maximum power of the engine, measured as horsepower/KW@rpm

U. Torque—the maximum torque of the engine, measured as lb-ft@rpm

8. Transmission Code—an integer; unique number assigned to each transmission

A. Manufacturer—manufacturer abbreviation

B. Name—name of transmission

C. Country of origin—where the transmission is manufactured

D. Type—type of transmission. Classified as C = clutch, CVT1 = belt or chain CVT, CVT2 = other CVT, T = torque converter

E. Number of Forward Gears—integer indicating number of forward gears

F. Control—classified as A = automatic, M = manual; ASMT would be coded as Type = C, Control = A

G. Logic—indicates aggressivity of automatic shifting. Classified as A = aggressive, C = conventional U.S.

9. Origin—classification as domestic or import, listed as D = domestic, I = international

b. Sales—actual and projected U.S. production for MY2005 to MY 2012 inclusive, measured in thousands of vehicles:

c. Vehicle Information:

1. Style—classified as Pickup; Sport Utility; or Van

2. Class—classified as Cargo Van; Crossover Vehicle; Large Pickup; Midsize Pickup; Minivan; Passenger Van; Small Pickup; Sport Utility Vehicle; or Sport Utility Truck

3. Structure—classified as either Ladder or Unibody

4. Drive—classified as A = all-wheel drive; F = front-wheel drive; R = rear-wheel-drive; 4 = 4-wheel drive

5. Wheelbase—measured in inches; defined per SAE J1100, L101 (July 2002)

6. Track Width (front)—measured in inches; defined per SAE J1100, W101–1 (July 2002), and clarified above

7. Track Width (rear)—measured in inches; defined per SAE J1100, W101–2 (July 2002), and clarified above

8. Footprint—wheelbase times average track width; measured in square feet

9. Curb Weight—total weight of vehicle including batteries, lubricants, and other expendable supplies but excluding the driver, passengers, and other payloads (as per SAE J1100); measured in pounds

10. Test Weight—weight of vehicle as tested, including the driver, operator (if necessary), and all instrumentation (as per SAE J1263); measured in pounds

11. GVWR—Gross Vehicle Weight Rating; weight of loaded vehicle, including passengers and cargo; measured in pounds

12. Frontal Area—a measure of the height times width of the front of a vehicle, e.g. 35 square feet.

13. Drag Coefficient, C^d—a dimensionless measure of the aerodynamic sleekness of an object, *e.g.*, 0.25.

14. Coefficient of Rolling Resistance, C^r—a dimensionless measure of the resistance to motion experienced by one body rolling upon another, *e.g.*, 0.0012.

15. Seating (max)—number of usable seat belts before folding and removal of seats (where accomplished without special tools); provided in integer form

16. Fuel Capacity—measured in gallons of diesel fuel or gasoline; MJ (LHV) of other fuels (or chemical battery energy)

17. Electrical System Voltage—measured in volts, e.g. 12 volt, 42 volts

18. Front Head Room—measured in inches; defined per SAE J1100, H61 (July 2002)

19. Rear Head Room—measured in inches; defined per SAE J1100, H63, H86 (July 2002)

20. Front Shoulder Room—measured in inches; defined per SAE J1100, W3, W85 (July 2002)

21. Rear Shoulder Room—measured in inches; defined per SAE J1100, W4, W86 (July 2002)

22. Front Hip Room—measured in inches; defined per SAE J1100, W5 (July 2002)

23. Rear Hip Room—measured in inches; defined per SAE J1100, W6 (July 2002)

24. Front Leg Room—measured in inches; defined per SAE J1100, L34 (July 2002)

25. Rear Leg Room—measured in inches; defined per SAE J1100, L51, L86 (July 2002)

26. Turning Circle—diameter of the circle made by the front wheel with the steering at full lock (the left or right stop) and the vehicle perpendicular to the roadway (as per SAE J695); measured in feet

d. MSRP—measured in dollars (2005); actual and projected average MSRP (sales-

weighted, including options) for MY2005 to MY 2012 inclusive

e. Type (Hybridization)—the type of hybridization of the vehicle, if any. Classified as E = electric, H = hydraulic

f. Planning and Assembly:

1. US/Canadian/Mexican Content—measured as a percentage; overall percentage, by value, that originated in U.S., Canada and Mexico

2. Predecessor—number and name of model upon which current model is based, if any

3. Last Freshening—model year

4. Next Freshening—model year

5. Last Redesign—model year; where redesign means any change, or combination of changes to a vehicle that would change its weight by 50 pounds or more or change its frontal area or aerodynamic drag coefficient by 2 percent or more.

6. Next Redesign—model year

7. Employment Hours Per Vehicle—number of hours of U.S. labor applied per vehicle produced

The agency also requests that each manufacturer provide an estimate of its overall light truck CAFE for each model year. This estimate should be included as an entry in the spreadsheets that are submitted to the agency.

4. Does respondent project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to Question 3, in its light truck fleets in MYs 2005–2012? If so, for each basic engine or variant indicate:

a. The projected year of introduction,

b. Type (e.g., spark ignition, direct injection diesel, 2-cycle, alternative fuel use),

c. Displacement (If engine has variable displacement, please provide the minimum and maximum displacement),

d. Type of induction system (e.g., fuel injection with turbocharger, naturally aspirated),

e. Cylinder configuration (e.g., V–8, V–6, I–4),

f. Number of valves per cylinder (e.g., 2, 3, 4),

g. Valvetrain design (e.g., overhead valve, overhead camshaft,

h. Valve technology (e.g., variable valve timing, variable valve lift and timing, intake valve throttling, camless valve actuation, etc.)

i. Horsepower and torque ratings,

j. Models in which engines are to be used, giving the introduction model year for each model if different from ''a,'' above.

5. Relative to MY 2005 levels, for MYs 2005–2012, please provide information, by truckline and as an average effect on a manufacturer's entire light truck fleet, on the weight and/or fuel economy impacts of the following standards or equipment:

a. Federal Motor Vehicle Safety Standard (FMVSS 208) Automatic Restraints

b. FMVSS 201 Occupant Protection in Interior Impact

c. Voluntary installation of safety equipment (e.g., antilock brakes)

d. Environmental Protection Agency regulations

e. California Air Resources Board requirements

f. Other applicable motor vehicle regulations affecting fuel economy.

6. For each of the model years 2005–2012, and for each light truck model projected to be manufactured by respondent (if answers differ for the various models), provide the requested information on new technology applications for each of items ''6a'' through ''6r'' listed below:

(i) description of the nature of the technological improvement;

(ii) the percent fuel economy improvement averaged over the model;

(iii) the basis for your answer to 6(ii), (e.g., data from dynamometer tests conducted by respondent, engineering analysis, computer simulation, reports of test by others);

(iv) the percent production implementation rate and the reasons limiting the implementation rate;

(v) a description of the 2005 baseline technologies and the 2005 implementation rate; and

(vi) the reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 6(ii) and 6(iv) a tabular presentation, a sample portion of which is shown in Table III–A.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include benefits of lock-up or bypassed torque converters, electronic control of shift points and torque converter lock-up, and other measures which should be described.

b. Improved manual transmissions. Projections of percent of fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in ''a'' or ''b'' above, project the percentage of fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratios. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcase lubricants of lower viscosity or with additives to improve friction characteristics or accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 2005 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine-driven accessories or accessory drives. Typical engine-driven accessories include water pump, cooling fan, alternator, power steering pump, air conditioning compressor, and vacuum pump.

f. Reduction of tire rolling losses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (e.g., reduced aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 2005 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improves lubricants in the differential and wheel bearing, and optimizing suspension geometry (e.g., to minimize tire scrubbing loss).

h. Reduction of aerodynamic drag.

i. Turbocharging or supercharging.

j. Improvements in the efficiency of 4-cycle spark ignition engines including (1) increased compression ratio; (2) leaner air-to-fuel ratio; (3) revised combustion chamber configuration; (4) fuel injection; (5) electronic fuel metering; (6) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (8) variable valve timing or valve lift; (9) multiple valves per cylinder; (10) cylinder deactivation; (11) friction reduction by means such as low tension piston rings and roller cam followers; (12) higher temperature operation; and (13) other methods (specify).

k. Direct injection gasoline engines.

l. Naturally aspirated diesel engines, with direct or indirect fuel injection.

m. Turbocharged or supercharged diesel engines with direct or indirect fuel injection.

n. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

o. Two cycle spark ignition engines.

p. Use of hybrid drivetrains

q. Use of fuel cells; provide a thorough description of the fuel cell technology employed, including fuel type and power output.

r. Other technologies for improving fuel economy or efficiency.

7. For each model of respondent's light truck fleet projected to be manufactured in each of MYs 2005–2012, describe the methods used to achieve reductions in average test weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used. Separate listings are to be used for 4x2 light trucks and 4x4 light trucks.

a. Substitution of materials.

b. ''Downsizing'' of existing vehicle design to reduce weight while maintaining interior roominess and comfort for passengers, and utility, *i.e.*, the same or approximately the same, payload and cargo volume, using the same basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts, which provides reduced weight for approximately the same payload and cargo volume.

8. Indicate any MY 2005–2012 light truck model types that have higher average test weights than comparable MY 2004 model types. Describe the reasons for any weight increases (e.g., increased option content, less use of premium materials) and provide supporting justification.

9. For each new or redesigned vehicle identified in response to Question 3 and each new engine or fuel economy improvement identified in your response to Questions 3, 4, 5, and 6, provide your best estimate of the following, in terms of constant 2005 dollars:

(a) Total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in your response. Subdivide the capital costs into

tooling, facilities, launch, and engineering costs.

(b) The maximum production capacity, expressed in units of capacity per year, associated with the capital expenditure in (a) above. Specify the number of production shifts on which your response is based and define ''maximum capacity'' as used in your answer.

(c) The actual capacity that is planned to be used each year for each new/redesigned model or fuel economy improvement.

(d) The increase in variable costs per affected unit, based on the production volume specified in (b) above.

(e) The equivalent retail price increase per affected vehicle for each new/redesigned model or improvement. Provide an example describing methodology used to determine the equivalent retail price increase.

10. Please provide respondent's actual and projected U.S. light truck sales, 4x2 and 4x4, 0–8,500 lbs. GVWR and 8501–10,000 lbs., GVWR for each model year from 2005 through 2012, inclusive. Please subdivide the data into the following vehicle categories:

i. Standard Pickup Heavy (*e.g.*, C2500/3500, F–250/350)

ii. Standard Pickup Light (*e.g.*, C1500, F–150)

iii. Compact Pickup (*e.g.*, S–10, Ranger, Dakota)

iv. Standard Cargo Vans Heavy (*e.g.*, G3500, E–250/350)

v. Standard Cargo Vans Light (*e.g.*, G1500/2500, E–150)

vi. Standard Passenger Vans Heavy (*e.g.*, G3500, E–250/350)

vii. Standard Passenger Vans Light (*e.g.*, G1500/2500, E–150)

viii. Compact Cargo Vans (*e.g.*, Astro/Safari)

ix. Compact Passenger Vans (*e.g.*, Sienna, Odyssey, Caravan)

x. Full-size Sport Utilities (*e.g.*, Tahoe, Expedition, Sequoia)

xi. Mid-size Sport Utilities (*e.g.*, Trailblazer, Explorer)

xii. Compact Utilities (*e.g.*, Wrangler, RAV4)

xiii. Crossover Vehicle (*e.g.*, Pacifica, Rendezvous, RX 330)

xiv. Sport Utility Trucks (*e.g.*, Avalanche, Ridgeline)

See Table III–B for a sample format.

11. Please provide your estimates of projected *total industry* U.S. light (0–10,000 lbs, GVWR) truck sales for each model year from 2005 through 2012, inclusive. Please subdivide the data into 4x2 and 4x4 sales and into the vehicle categories listed in the sample format in Table III–C.

12. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 2005 through 2012.

13. Please provide projected production capacity available for the North American market (at standard production rates) for each of your company's light truckline designations during MYs 2005–2012.

14. Please provide your estimate of production lead-time for new models, your expected model life in years, and the number of years over which tooling costs are amortized.

Note: The parenthetical numbers in Table III–A refer to the items in Section III, *Specifications.*

TABLE III–A.—TECHNOLOGY IMPROVEMENTS

Technological improvement	Baseline technology	Percent fuel economy improvement	Basis for improvement estimate	Models on which technology is applied	Production share of model with technological improvement				
					2005	2006	2007	2008	2009+
(6a.) Improved Auto Trans:									
LT–1		7.0			0	0	15	25	55
LT–2		6.5			0	0	0	20	25
LT–3		5.0			0	10	30	60	60
(6b) Improved Manual Trans:									
LV–1		1.0			2	5	5	5	5
U–1		0.7			0	0	0	8	10

TABLE III–B.—ACTUAL AND PROJECTED U.S. LIGHT TRUCK SALES

Amalgamated Motors light truck sales projections						
Model Line	Model year					
	2005	2006	2007	2008	2009	2010+
Compact Pickup	43,500					
Standard Pickup—Light	209,340					
Standard Pickup—Heavy	120,000					
Compact Cargo Van	60,000					
Standard Cargo Van—Light	20,000					
Standard Cargo Van—Heavy	29,310					
Compact Passenger Van/Minivan	54,196					
Standard Passenger Van—Light	38,900					
Standard Passenger Van—Heavy.						
Compact Sport Utility.						
Mid-size Sport Utility.						
Full-size Sport Utility.						
Crossover Vehicle.						
Sport Utility Truck.						
Total	TBD					

TABLE III–C.—TOTAL U.S. LIGHT TRUCK SALES

Model type	2005	2006	2007	2008	2009	2010+
Compact Pickup.						
Standard Pickup—Light.						
Standard Pickup—Heavy.						

TABLE III–C.—TOTAL U.S. LIGHT TRUCK SALES—Continued

Model type	2005	2006	2007	2008	2009	2010+
Compact Cargo Van.						
Standard Cargo Van—Light.						
Standard Cargo Van—Heavy.						
Compact Passenger Van/Minivan.						
Standard Passenger Van—Light.						
Standard Passenger Van—Heavy.						
Compact Sport Utility.						
Mid-size Sport Utility.						
Full-size Sport Utility.						
Crossover Vehicle.						
Sport Utility Truck.						
Total.						

IV. Cost and Potential Fuel Economy Improvements of Technologies

The agency requests that each manufacturer and other interested parties provide estimates of the range of costs and fuel economy improvements of available fuel economy technologies. These estimates should follow the format provided by Tables IV–A through IV–D. For comparison purposes the agency has listed the technologies included in the NAS report, together with the range (low and high) of fuel economy improvement and cost estimates for all of the technologies included in the report.

The agency has also added some technologies to these tables as well as separate rows for the cost and fuel economy improvement estimates when technologies are applied to engines having a different number of cylinders or when they are applied to vehicles with different numbers of gears. Thus, for example, if a manufacturer or other interested party has different cost and fuel economy improvement estimates for the application of a technology to a 4-cylinder and a 6-cylinder engine, these estimates should be represented as separate rows on its table. Likewise, for example, if a manufacturer or other interested party has different cost and fuel economy improvement estimates for using 6-speed automatic transmission versus a 4-speed and a 5-speed automatic transmission, these estimates should be represented as separate rows on its table.

The agency is also interested in whether different cost and fuel economy improvement estimates apply to different vehicle classes. Thus, the agency is asking for any information regarding the effectiveness and cost of fuel economy technologies on a vehicle class basis. Light truck vehicle classes are listed in Tables III–B and III–C.

If respondents have information that breaks out the cost and fuel economy improvement estimates by vehicle classes, the agency asks that in addition to providing charts which provide a respondent's complete range of estimates, that respondents provide separate charts for each vehicle class following the example of Tables IV–B and IV–D. Spreadsheet templates for these tables can be found at: *www.nhtsa.dot.gov/cars/rules/CAFE/rulemaking.htm*.

If a manufacturer or other interested party has fuel economy improvement and cost estimates for technologies not included on these tables, the agency asks the manufacturer or other interested party to provide that information to the agency.

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Table IV-A – Estimates of Fuel Economy Improvement of Fuel Economy Technologies for All Vehicle Classes

	NAS		Amalgamated	
	Low	High	Low	High
Production-Intent Engine Technology				
Engine Friction Reduction	1.0%	5.0%	[1.0%]c	[6.0%]c
Low Friction Lubricants	1.0%	1.0%	[0.5%]c	[1.0%]c
Multi-Valve, Overhead Camshaft	2.0%	5.0%	[2.5%]c	[3.6%]c
Variable Valve Timing	2.0%	3.0%	[2.0%]c	[3.2%]c
- 4 cylinder engine	2.0%	3.0%	[2.5%]c	[3.2%]c
- 6 cylinder engine	2.0%	3.0%	[2.0%]c	[3.0%]c
- 8 cylinder engine	2.0%	3.0%	[2.0%]c	[2.5%]c
Variable Valve Lift & Timing	1.0%	2.0%	[1.0%]c	[1.5%]c
Cylinder Deactivation	3.0%	6.0%	[4.0%]c	[6.5%]c
- 6 cylinder engine	3.0%	6.0%	[4.0%]c	[4.5%]c
- 8 cylinder engine	3.0%	6.0%	[5.5%]c	[6.5%]c
Engine Accessory Improvement	1.0%	2.0%	[0.5%]c	[2.5%]c
Engine Supercharging & Downsizing	5.0%	7.0%		
Production-Intent Transmission Technology				
5-Speed Automatic Transmission	2.0%	3.0%	[2.0%]c	[2.8%]c
Continuously Variable Transmission	4.0%	8.0%	[5.0%]c	[6.5%]c
Automatic Transmission w/ Aggressive Shift Logic	1.0%	3.0%		
6-Speed Automatic Transmission (vs. 5-speed automatic)	1.0%	2.0%	[1.0%]c	[2.7%]c
6-Speed Automatic Transmission (vs. 4-speed automatic)	3.0%	5.0%	[3.5%]c	[4.0%]c
Production-Intent Vehicle Technology				
Aero Drag Reduction	1.0%	2.0%	[0.9%]c	[2.0%]c
Improve Rolling Resistance	1.0%	1.5%	[0.8%]c	[1.5%]c
Emerging Engine Technology				
Intake Valve Throttling	3.0%	6.0%	[4.0%]c	[7.0%]c
Camless Valve Actuation	5.0%	10.0%	[6.0%]c	[9.0%]c
Variable Compression Ratio	2.0%	6.0%	[2.5%]c	[5.5%]c
Direct Injection	N/A	N/A	[2.0%]c	[2.5%]c
Diesel Engine	N/A	N/A	[15%]c	[40%]c
Emerging Transmission Technology				
Automatic Shift Manual Transmission (AST/AMT)	3.0%	5.0%	[4.0%]c	[5.0%]c
Advanced CVTs	0.0%	2.0%	[1.0%]c	[1.0%]c
Emerging Vehicle Technology				
42 Volt Electrical Systems	1.0%	2.0%	[1.0%]c	[3.0%]c
Integrated Starter/Generator	4.0%	7.0%	[5.0%]c	[8.5%]c
Electric power Steering	1.5%	2.5%	[1.0%]c	[2.0%]c
Vehicle Weight Reduction	3.0%	4.0%	[2.0%]c	[6.0%]c

Table IV-B – Estimates of Fuel Economy Improvement of Fuel Economy Technologies for the Full-size Sport Utility Vehicle Class

	NAS		Amalgamated	
	Low	High	Low	High
Production-Intent Engine Technology				
Engine Friction Reduction	1.0%	5.0%	[1.0%]c	[6.0%]c
Low Friction Lubricants	1.0%	1.0%	[0.5%]c	[1.0%]c
Multi-Valve, Overhead Camshaft	2.0%	5.0%	[2.5%]c	[3.6%]c
Variable Valve Timing	2.0%	3.0%	[2.0%]c	[3.2%]c
- 4 cylinder engine	N/A	N/A	N/A	N/A
- 6 cylinder engine	2.0%	3.0%	[2.0%]c	[3.0%]c
- 8 cylinder engine	2.0%	3.0%	[2.0%]c	[2.5%]c
Variable Valve Lift & Timing	1.0%	2.0%	[1.0%]c	[1.5%]c
Cylinder Deactivation	3.0%	6.0%	[4.0%]c	[6.5%]c
- 6 cylinder engine	3.0%	6.0%	[4.0%]c	[4.5%]c
- 8 cylinder engine	3.0%	6.0%	[5.5%]c	[6.5%]c
Engine Accessory Improvement	1.0%	2.0%	[0.5%]c	[2.5%]c
Engine Supercharging & Downsizing	5.0%	7.0%		
Production-Intent Transmission Technology				
5-Speed Automatic Transmission	2.0%	3.0%	[2.0%]c	[2.8%]c
Continuously Variable Transmission	N/A	N/A	N/A	N/A
Automatic Transmission w/ Aggressive Shift Logic	1.0%	3.0%		
6-Speed Automatic Transmission (vs. 5-speed automatic)	1.0%	2.0%	[1.0%]c	[2.7%]c
6-Speed Automatic Transmission (vs. 4-speed automatic)	3.0%	5.0%	[3.5%]c	[4.0%]c
Production-Intent Vehicle Technology				
Aero Drag Reduction	1.0%	2.0%	[0.9%]c	[2.0%]c
Improve Rolling Resistance	1.0%	1.5%	[0.8%]c	[1.5%]c
Emerging Engine Technology				
Intake Valve Throttling	3.0%	6.0%	[4.0%]c	[7.0%]c
Camless Valve Actuation	5.0%	10.0%	[6.0%]c	[9.0%]c
Variable Compression Ratio	2.0%	6.0%	[2.5%]c	[5.5%]c
Direct Injection	N/A	N/A	[2.0%]c	[2.5%]c
Diesel Engine	N/A	N/A	[15%]c	[40%]c
Emerging Transmission Technology				
Automatic Shift Manual Transmission (AST/AMT)	3.0%	5.0%	[4.0%]c	[5.0%]c
Advanced CVTs	N/A	N/A	N/A	N/A
Emerging Vehicle Technology				
42 Volt Electrical Systems	1.0%	2.0%	[1.0%]c	[3.0%]c
Integrated Starter/Generator	4.0%	7.0%	[5.0%]c	[8.5%]c
Electric power Steering	1.5%	2.5%	[1.0%]c	[2.0%]c
Vehicle Weight Reduction	3.0%	4.0%	[2.0%]c	[6.0%]c

Table IV-C – Cost Estimates for Fuel Economy Technologies for All Vehicle Classes

[ ]c = CONFIDENTIAL	NAS		Amalgamated	
Technology	Low	High	Low	High
Production-Intent Engine Technology				
Engine Friction Reduction	$ 35	$ 140	[$30]c	[$90]c
Low Friction Lubricants	$ 8	$ 11	[$1]c	[$5]c
Multi-Valve, Overhead Camshaft	$105	$ 140	[$110]c	[$180]c
Variable Valve Timing	$ 35	$ 140	[$30]c	[$130]c
- 4 cylinder engine	$ 35	$ 140	[$40]c	[$110]c
- 6 cylinder engine	$ 35	$ 140	[$30]c	[$100]c
- 8 cylinder engine	$ 35	$ 140	[$60]c	[$130]c
Variable Valve Lift & Timing	$ 70	$ 210	[$50]c	[$190]c
Cylinder Deactivation	$112	$ 252	[$80]c	[$280]c
- 6 cylinder engine	$112	$ 252	[$200]c	[$280]c
- 8 cylinder engine	$112	$ 252	[$80]c	[$150]c
Engine Accessory Improvement	$ 84	$ 112	[$5]c	[$5]c
Engine Supercharging & Downsizing	$350	$ 560	[$500]c	[$750]c
Production-Intent Transmission Technology				
5-Speed Automatic Transmission	$ 70	$ 154	[$90]c	[$140]c
Continuously Variable Transmission	$140	$ 350	[$500]c	[$500]c
Automatic Transmission w/ Aggressive Shift Logic	$ -	$ 70		
6-Speed Automatic Transmission (vs. 5-speed automatic)	$140	$ 280	[$110]c	[$225]c
6-Speed Automatic Transmission (vs. 4-speed automatic)	N/A	N/A	[$200]c	[$350]c
Production-Intent Vehicle Technology				
Aero Drag Reduction	$ -	$ 140	[$100]c	[$100]c
Improve Rolling Resistance	$ 14	$ 56	[$6]c	[$6]c
Emerging Engine Technology				
Intake Valve Throttling	$210	$ 420	[$220]c	[$380]c
Camless Valve Actuation	$280	$ 560		
Variable Compression Ratio	$210	$ 490		
Direct Injection	N/A	N/A	[$210]c	[$315]c
Diesel Engine	N/A	N/A	[$1,500]c	[$5,000]c
Emerging Transmission Technology				
Automatic Shift Manual Transmission (AST/AMT)	$ 70	$ 280	[$90]c	[$240]c
Advanced CVTs	$350	$ 840	[$390]c	[$640]c
Emerging Vehicle Technology				
42 Volt Electrical Systems	$ 70	$ 280	[$80]c	[$190]c
Integrated Starter/Generator	$210	$ 350	[$190]c	[$340]c
Electric power Steering	$105	$ 150	[$100]c	[$140]c
Vehicle Weight Reduction	$210	$ 350	[$150]c	[$250]c

Table IV-D – Cost Estimates for Fuel Economy Technologies for the Full-size Sport Utility Vehicle Class

[ ]c = CONFIDENTIAL	NAS		Amalgamated	
Technology	Low	High	Low	High
Production-Intent Engine Technology				
Engine Friction Reduction	$ 35	$ 140	[$30]c	[$90]c
Low Friction Lubricants	$ 8	$ 11	[$1]c	[$5]c
Multi-Valve, Overhead Camshaft	$105	$ 140	[$110]c	[$180]c
Variable Valve Timing	$ 35	$ 140	[$30]c	[$130]c
- 4 cylinder engine	N/A	N/A	N/A	N/A
- 6 cylinder engine	$ 35	$ 140	[$30]c	[$100]c
- 8 cylinder engine	$ 35	$ 140	[$60]c	[$130]c
Variable Valve Lift & Timing	$ 70	$ 210	[$50]c	[$190]c
Cylinder Deactivation	$112	$ 252	[$80]c	[$280]c
- 6 cylinder engine	$112	$ 252	[$200]c	[$280]c
- 8 cylinder engine	$112	$ 252	[$80]c	[$150]c
Engine Accessory Improvement	$ 84	$ 112	[$5]c	[$5]c
Engine Supercharging & Downsizing	$350	$ 560	[$500]c	[$750]c
Production-Intent Transmission Technology				
5-Speed Automatic Transmission	$ 70	$ 154	[$90]c	[$140]c
Continuously Variable Transmission	N/A	N/A	N/A	N/A
Automatic Transmission w/ Aggressive Shift Logic	$ -	$ 70		
6-Speed Automatic Transmission (vs. 5-speed automatic)	$140	$ 280	[$110]c	[$225]c
6-Speed Automatic Transmission (vs. 4-speed automatic)	N/A	N/A	[$200]c	[$350]c
Production-Intent Vehicle Technology				
Aero Drag Reduction	$ -	$ 140	[$100]c	[$100]c
Improve Rolling Resistance	$ 14	$ 56	[$6]c	[$6]c
Emerging Engine Technology				
Intake Valve Throttling	$210	$ 420	[$220]c	[$380]c
Camless Valve Actuation	$280	$ 560		
Variable Compression Ratio	$210	$ 490		
Direct Injection	N/A	N/A	[$210]c	[$315]c
Diesel Engine	N/A	N/A	[$1,500]c	[$5,000]c
Emerging Transmission Technology				
Automatic Shift Manual Transmission (AST/AMT)	$ 70	$ 280	[$90]c	[$240]c
Advanced CVTs	N/A	N/A	N/A	N/A
Emerging Vehicle Technology				
42 Volt Electrical Systems	$ 70	$ 280	[$80]c	[$190]c
Integrated Starter/Generator	$210	$ 350	[$190]c	[$340]c
Electric power Steering	$105	$ 150	[$100]c	[$140]c
Vehicle Weight Reduction	$210	$ 350	[$150]c	[$250]c

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Part III

Department of the Interior

Minerals Management Service

30 CFR Parts 250 and 282

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Plans and Information; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 282

RIN 1010–AC47

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Plans and Information

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final Rule.

SUMMARY: This rule reorganizes and updates the requirements and processes for submitting various plans and information for MMS review and approval before a lessee or an operator may explore, develop, or produce oil and gas and sulphur in the Outer Continental Shelf (OCS).

EFFECTIVE DATE: This rule becomes effective September 29, 2005.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, Offshore Regulatory Programs, (703) 787–1604.

SUPPLEMENTARY INFORMATION: The current regulations at 30 CFR part 250, subpart B, were structured into five broad sections: General Requirements, Preliminary Activities, Well Location and Spacing, Exploration Plan, and Development and Production Plan. This rule reorganizes and clarifies the requirements pertaining to Exploration Plans (EP), Development and Production Plans (DPP), and Development Operations Coordination Documents (DOCD). It also adds sections to describe Deepwater Operations Plans (DWOP) and Conservation Information Documents (CID). The rule provides more descriptive headings under which a large number of separate sections state the current requirements clearly and concisely and in a more logical order to:

- Clarify and update the review process;
- Provide a concise list of the contents of EP, DPP, and DOCD (plan) submissions; and
- Detail the accompanying information that lessees and operators must submit to support their plans.

Notice to Lessees and Operators (NTL) for the Gulf of Mexico OCS Region (GOMR)

MMS is also issuing a companion NTL for the GOMR. This NTL further interprets the requirements in the rule regarding the information a lessee or operator must submit for MMS determinations, analyses, and approvals of EPs and DOCDs as they would apply specifically to leases and units in the GOMR. It also explains how the GOMR is invoking 30 CFR 250.201(c) with respect to limiting submission of information that is not needed in particular cases.

Background

The Outer Continental Shelf Lands Act (OCSLA) requires that before conducting activities on a lease that has been awarded, lessees must file and MMS must approve EPs or DPPs describing their proposed activities. The OCSLA, at 43 U.S.C. 1351(a)(1), provides that DPPs aren't required in the GOM. 43 U.S.C. 1351(l) then provides that the Secretary may require the provisions of section 1351 to apply to leases in areas adjacent to the State of Florida. Current rules at 30 CFR 250.204(d) require DPPs for leases except those in the Western GOM. This is continued in § 250.201(a)(2) of this final rule. Section 250.105 defines the Western GOM as all areas of the GOM except those adjacent to the State of Florida. However, because of the need to review and track development activities in the Western GOM, DOCDs are required for leases in the Western GOM.

According to the OCSLA, in reviewing EPs and DPPs, MMS must ensure that the proposed activities will not:

(1) Cause serious or undue harm or damage to (a) life, (b) property, (c) any other mineral deposits (in leased or unleased areas), (d) the national security or defense, or (e) the marine, coastal, or human environment;

(2) Unreasonably interfere with other uses of the area;

(3) Interfere with or endanger operations on other leases;

(4) Result in pollution;

(5) Create hazardous or unsafe conditions; or

(6) Disturb any site, structure, or object of historical or archaeological significance.

Under the OCSLA, MMS must also ensure that the proposed activities will comply with other applicable Federal laws and regulations, including the Clean Air Act (CAA), Endangered Species Act (ESA), Marine Mammal Protection Act, National Historic Preservation Act, Coastal Zone Management Act (CZMA), and Clean Water Act. The regulations at 30 CFR part 250 subpart B are intended to enable MMS to carry out these responsibilities under the OCSLA.

MMS issues NTLs to explain and clarify its regulations. MMS rescinds NTLs that have served their short-term purpose and now regularly reviews the long-term NTLs—both regional and national—to keep them up-to-date and to ensure their accuracy and applicability.

MMS must also comply with the National Environmental Policy Act (NEPA), its implementing regulations issued by the Council on Environmental Quality (CEQ) at 40 CFR parts 1500 through 1508, and policies of the Department of the Interior (DOI). According to NEPA requirements, MMS must prepare an Environmental Assessment (EA) in connection with its review of plans for activities on the OCS. The contents of these plans must be sufficient to support a sound analysis of potential environmental impacts that may result from the proposed activity. The appropriate MMS Region prepares these analyses for every plan received.

However, the NEPA regulations (40 CFR 1508.4) do allow agencies to exclude categories of actions from the preparation of an EA or an Environmental Impact Statement (EIS) when agency procedures have demonstrated that these actions—individually or cumulatively—do not have a significant impact on the environment.

MMS follows the procedures outlined in the DOI's Departmental Manual (516 DM 15) to categorically exclude (''CATEX'') routine OCS lease or unit plans in the Western and Central GOM Planning Areas unless certain exceptions are present. Some exceptions pertain to the nature of the proposed activity, and others to the nature of potential environmental impacts that may result from the activity. When MMS processes plans using a Categorical Exclusion Review (CER), the agency reviews the proposed activity and the potential environmental impacts at the proposed site. These do not require MMS to prepare an EA, and MMS may limit the information that the lessee/operator is required to submit unless the information is required for compliance with other Federal laws. MMS prepares an EA in its review of plans that meets the criteria of the specified exceptions to the CATEX criteria. As required by NEPA, if the EA concludes that significant impacts will result from the proposed activity, MMS will prepare an EIS.

Whether MMS reviews plans through the CER or EA process, the agency requires that environmental impacts be avoided or diminished to an acceptable level through plan amendments or conditions that MMS imposes in the plan approval. See proposed rule published on May 17, 2002 (67 FR 35372).

Changes to Subpart B Regulations

Subpart B incorporates many of the detailed procedures and processes that were addressed in Letters to Lessees (LTLs) and NTLs. Although the rule may appear to contain many changes from the text of the former 30 CFR part 250, subpart B, including expanded lists of data and information to be submitted, the rewritten regulations basically reflect current requirements and ongoing practices as conveyed to lessees and operators via NTLs and LTLs.

There are, however, some new or expanded areas. The following is a list of the major changes in this rule:

(1) Definitions—§ 250.200: Definitions are added to explain certain terms used in the rule.

(2) Conservation—§§ 250.203 and 250.204: The rule adds language to further clarify and emphasize conservation practices. This language will ensure the proper development of economically producible reservoirs according to sound conservation, engineering, and economic practices. The rule adds clarifying language to protect the full interest of the Federal government along State and foreign boundaries.

(3) Electronic Filing—§ 250.206(b): The regulations allow for electronic filing of EPs, DOCDs, DPPs, and their accompanying information to expedite their review.

(4) Ancillary Activities—§§ 250.207 to 250.210: Under the current regulations activities conducted without the approval of an application or permit, in order to obtain information to ensure proper exploration or development of a lease or unit, are ''preliminary'' activities. These activities are conducted before submitting an EP, DPP, or DOCD. The term ''preliminary'' activities is not used in this revised rule. Instead, the term ''ancillary'' activities is added, and the rule covers ancillary activities that could be conducted after, as well as before, an EP, DPP, or DOCD is submitted to MMS. The terms ''development geological and geophysical activities'' and ''geological and geophysical explorations'' are added to clarify certain types of ancillary activities.

(5) Written Notice—§ 250.208: The rule contains requirements for conducting on-lease geological and geophysical (G&G) explorations or development geological and geophysical activities that are ancillary activities. Lessees and operators must give MMS a written notice before beginning any such ancillary activities, including those conducted after an OCS plan is approved. This is not a new requirement; various NTLs describe this notice. The notice enables MMS to better ensure safe use and environmental protection of the OCS with respect to these G&G activities. Notification makes MMS aware of significant sets of valuable data that could and will be incorporated into MMS analyses and MMS-funded studies.

(6) Other Requirements Related to Notice of Certain Ancillary Activities—§§ 250.208(c) and 250.209: Along with the notice requirement, lessees and operators may be required to prepare and submit a report, retain certain data and information, and notify other users of the OCS before conducting ancillary activities.

(7) Detailing Accompanying Information—§§ 250.212 and 250.242: The rule details what information must accompany EPs, DPPs, and DOCDs. MMS makes its decision to approve, require modification of, or disapprove OCS plans based on its evaluation of the accompanying information, as well as the plan contents. If MMS determines that a plan has inadequate accompanying information, or if it omits accompanying information, then MMS will not deem the plan submitted.

The rule clarifies that the adequacy review will not begin until MMS receives both the OCS plan and its accompanying information. The objective is efficiency—so that lessees and operators provide MMS with all required information for OCSLA, NEPA, CZMA, and other purposes at the beginning of the process. These regulations and the accompanying NTL notify industry ''up front'' of the information needed for expeditious review of an OCS plan, thereby reducing the need for additional filings and costly delays. This benefits industry and MMS long-term, particularly in those cases when an EA is required.

(8) Detailing Cooling Water Intake Information—§§ 250.217 and 250.248: The rule contains new requirements for EPs, DPPs, and DOCDs, which briefly summarize information on cooling water intake structures, and mitigation measures for reducing adverse environmental impacts and biofouling of intake structures.

(9) Environmental Impact Analysis (EIA)—§§ 250.227 and 250.261: Environmental ''reports'' were formerly required for CZMA and NEPA purposes, and to determine compliance with other Federal laws. The rule replaces these environmental reports with a reference to applicable regulations at 15 CFR part 930 for required CZMA information and an EIA for use in our NEPA analysis. The EIA information will aid, but not replace, MMS's NEPA evaluation, which is based both on the plan contents and accompanying information.

(10) Change in Timeframes for Deemed-submitted Review—§§ 250.231 and 250.266: The rule increases the time MMS can take to determine if a plan is deemed submitted from 10 to 15 working days for EPs, and from 20 to 25 working days for DPPs and DOCDs. The OCSLA requires MMS to make a decision on EPs within 30 days after they are submitted, and on DPPs and DOCDs within 60 days after they are submitted (unless an EIS is prepared). MMS needs adequate time before the decision-making period starts to determine that the plan and accompanying information fulfill requirements and are sufficiently accurate. Providing additional time at the beginning of the process is more efficient, and can avoid multiple delays later in the review process.

(11) Development Operations Coordination Document (DOCD)—§ 250.241: The rule treats DPPs and DOCDs the same way. DOCDs are submitted for the Western GOM only. The current regulations state that any information submitted in DOCDs under the provisions at 30 CFR 250.204(d)(1) and (d)(2) ''shall be considered a Development and Production Plan for the purpose of references in any law, regulation, lease provision, agreement, or other document referring to the preparation or submission of a plan.'' Therefore, MMS deals with them together.

(12) Deepwater Operations Plans (DWOP)—§§ 250.286 to 295: The sections of the final rule regarding the DWOP have been rewritten from the proposed rule for clarity. The final rule specifies more particularly than the proposed § 250.288 what a lessee may not do without approval of the respective parts of a DWOP.

The purpose of the DWOP is to ensure that MMS has sufficient information to review any development project that uses non-conventional production or completion technology (in most cases, floating or subsea production systems), from a total system approach. MMS evaluates the system to determine whether the project will be properly developed, particularly from the standpoint of operational safety and environmental protection issues.

A lessee must submit a DWOP if the lessee is going to use non-conventional production or completion technology, regardless of water depth. (The final rule adds a definition of the term ''non-conventional production or completion technology'' in the definitions section.)

Even though these provisions are not limited to deep water operations, the plan is called a Deepwater Operations Plan because the use of subsea development technology and floating platforms occurs primarily on the deep water leases.

The final rule's provisions supersede NTL 2000–N06. Therefore, NTL 2000–N06 is hereby rescinded when the regulations take effect on September 29, 2005. The preamble to the proposed rule stated that MMS would issue a new NTL to replace NTL No. 2000–N06. However, MMS now believes that there is no present need to issue a new NTL, and that the final rule's provisions adequately cover the information MMS needs. Experience with, and knowledge gained from, DWOPs submitted under the NTL and its predecessor NTL over the last several years has shown that the degree of detail required under NTL 2000–N06 is not needed at this point.

Under NTL 2000–N06, a DWOP was submitted in the three parts, a Conceptual Part, a Preliminary Part, and a Final Part. The real substance of the DWOP is in what was called the Preliminary Part under the NTL and the proposed rule, and is now the DWOP under the final rule. The Preliminary Part under the NTL, which the proposed rule would have continued, had proved to be unworkable and had not served any real purpose because there were no real changes in planned operations from the Preliminary Part in the first 90 days after production begins. Therefore, the final rule has simplified the process to two parts instead of three, a Conceptual Plan and a DWOP. The information required for the Preliminary Part under the proposed rule is required for what is called the DWOP in the final rule.

It is appropriate to explain the relationship of the DWOP to a DOCD. A DOCD must be approved and pass consistency review under section 307(c)(3) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456(c)(3), before the lessee may install a production platform. In addition to an approved DOCD, the lessee must obtain approval of an Application for Permit to Drill (APD) before the lessee may drill a production well. While the Conceptual Plan is likely to be (but is not necessarily) submitted before a DOCD is approved, approval of the Conceptual Plan often occurs after approval of a DOCD. (The DOCD will specify that the lessee will use a floating facility, but in most cases the DOCD likely will not address in detail the same matters that the DWOP addresses.) The lessee may obtain approval of a DOCD, pass CZMA consistency review, obtain approval of an APD, and even drill the well, without approval of the Conceptual Plan as long as the lessee does not complete the well or install the tree before MMS approves the Conceptual Plan.

Similarly, the DWOP must be submitted after the lessee has substantially completed safety system design and before procurement or fabrication of the safety and operational systems (other than the tree), production platforms, pipelines, etc., but the lessee may obtain approval of the DOCD, pass CZMA consistency review, and, if it wishes to do so, procure or manufacture the safety and operational systems, install the platform, drill the well, and (if the Conceptual Plan has been approved) complete the well and install the tree before MMS approves the DWOP, as long as the lessee does not begin production before approval of the DWOP. In most cases, MMS anticipates that both the Conceptual Plan and the DWOP will be approved before wells are drilled.

MMS is requiring lessees to submit the Conceptual Plan of the DWOP to the Regional Director after the lessee has decided on the general concept(s) for development and before beginning engineering design of the well safety control system or subsea production systems. MMS will not approve a straight hydraulic well control system if the host platform is more than ten miles away from the well. At distances greater than 10 miles, a straight hydraulic system will not shut a well in fast enough in the event of an emergency or other contingency requiring a shut-in. If the host platform is more than 10 miles away from the well, MMS generally will require an electro-hydraulic well control system. In addition, if a lessee is planning to use new or non-conventional technology from the point of completion onward (including subsea systems), it should explain what it intends to do in the Conceptual Plan.

The proposed rule (at § 250.295) contained timeframes within which MMS would decide to approve or disapprove the various parts of the DWOP. (The proposed rule did not specify what the consequences would be if MMS missed an approval deadline.) Upon further consideration, the agency has determined that it would not be appropriate to bind itself to the timeframes in the proposed rule, and has therefore removed these provisions in the final rule.

Finally, there are a few differences in the content requirements for the DWOP under the final rule and the Preliminary Part under the proposed rule. (Section 250.292 of the proposed rule specified what the Preliminary Part must contain, and § 250.292 of the final rule specifies what is now called the DWOP must contain.) First, paragraph (j) is refined because MMS has determined that it does not need a flow chart for the entire facility. It needs a description of the system up to the separation equipment.

Second, paragraph (1) in the proposed rule is not needed because MMS' notification to the lessee of approval of the DWOP will include a reminder that the lessee must obtain approval of production test allocation processes, flaring, and the Conservation Information Document before production may begin.

Third, paragraph (o) in the proposed rule was in the original NTL when the DWOP process was in its beginning stages. MMS does not now need a hazard analysis from a third party firm because MMS is much more familiar with deep water processes and hazards.

Fourth, paragraphs (n) and (o) in the final rule pertain to any new technology that affects the hydrocarbon recovery system and any alternate compliance procedures or departures for which the lessee anticipates requesting approval. MMS needs this type of information to properly evaluate the lessee's planned system.

(13) Conservation Information Documents (CID)—§§ 250.296 to 299: The rule contains new sections pertaining to CIDs. NTL 2000–N05 currently outlines the procedures for these documents. The revised rule incorporates the NTL procedures. Therefore, NTL 2000–N05 is hereby rescinded when the regulations take effect on September 29, 2005.

Discussion and Analysis of Comments to Proposed Rule

MMS received comments on the proposed rule and the draft NTL for the GOMR from the State of Florida (Florida), Ms. Cynthia Peeler (individual commenter), Mr. Peter Velez of Shell Exploration and Production Company (SEPCo), and a set of comprehensive comments from the oil and gas industry prepared by the American Petroleum Institute and Offshore Operators Committee (OOC). Mr. Velez' comments were general in nature and although MMS did not prepare specific responses to his comments, they were given due consideration and incorporated wherever possible. SEPCo also participated in and adopted the comments prepared by OOC. All comments were posted on the MMS Internet homepage. A summary of the comments received on the proposed rule and MMS' responses to the comments, follows.

Section 250.200 Definitions

Comment: OOC notes that it is confusing to have terms defined in this section and also in 30 CFR 250.105. It recommends that all definitions not directly related to plans be located in § 250.105. The terms that would remain in this section would be Amendment, Modification, Resubmitted OCS Plan, Revised OCS Plan, [and] Supplemental OCS Plan.

Response: MMS adopted the recommended changes, except that the definition of ''New or unusual technology'' remains in § 250.200. A definition for ''Non-conventional production or completion technology'' has been added to the final rule under § 250.200.

Comment: Florida comments on the definition of ''Ancillary activities'' to add [to (1)] ''but which are still required to be consistent with the coastal management programs of affected States.''

Response: No change. Ancillary activities do not require a Federal license or permit or other form of approval or permission (see 15 CFR 930.51(a)) and, therefore, are not subject to CZMA consistency requirements. However, should MMS, after review of the notification made under § 250.209, determine that an OCS plan is required; the plan will be subject to all plan review requirements.

Also, MMS deleted paragraph (2) in the proposed definition of ''ancillary activities'' which provided that ancillary activities need not be covered by an approved EP, DPP, or DOCD. Under certain circumstances an ancillary activity is required to be covered by an OCS plan. A change was also made to add the words ''data and'' before the word ''information'' in paragraph (1).

Comment: OOC comments that it is not clear whether the definition of ''Development geophysical activities'' excludes shallow hazards studies. It recommends that the definition be reworded to the following: ''Development geophysical activities means those geophysical and related data-gathering activities on your lease or unit that take place following discovery of oil, gas, or sulphur in paying quantities that detect or imply the presence of oil, gas or sulphur in commercial quantities.''

Response: MMS added the recommended language but retained the authority to require notice of shallow hazard surveys and other ancillary activities under § 250.208(b)(1) on a case-by-case basis.

Comment: OOC recommends that the definition of ''New or unusual technology'' be clarified so that extensions of existing technology which do not meet the proposed rule's criterion of ''(1) Function in a manner that potentially causes different impacts to the environment than the equipment or procedures did in the past,'' should not be considered as ''New or unusual technology.'' OOC recommends that the definition be reworded to the following: ''New or unusual technology means equipment or procedures that: (1) Have not been used previously or extensively in an MMS OCS Region; (2) Have not been used previously under the anticipated operating conditions; or (3) Have operating characteristics that are outside the performance parameters established by this part; and (4) Function in a manner that potentially causes different impacts to the environment than the equipment or procedures did in the past.'' It is OOC's understanding that at least in the GOMR, MMS maintains an internal list of technology that is to be considered ''new or unusual.'' While OOC recognizes that this list is periodically updated as technology moves out of the ''new or unusual'' category and may not cover everything that could be considered new or unusual, it would be helpful to industry for MMS to make this list available by posting it on the Web site.

Response: MMS agrees that a clarification is necessary and has deleted item (1) from the proposed definition of ''New or unusual technology'' and renumbered the remaining items in the definition. MMS maintains a list and determines whether the technology could cause different impacts, and plans to post the non-proprietary portions of the list.

Comment: OOC notes that in 30 CFR 250.201(c) the term ''comprehensive environmental management program'' is used. It requests a definition for this term.

Response: MMS deleted proposed § 250.201(c)(3) which contained the term. Consequently, no definition is needed.

Section 250.201(a) Plans and documents.

Comment: OOC disagrees that all of the listed plans must be approved before conducting any activities. For example, it may be necessary or desirable to install mooring piles well in advance of installing a floating facility. This activity would normally be a part of a DPP or DOCD and would also be described in a DWOP. Lessees and operators should not be prevented from performing this activity due to the CID not being approved. Rather, the approval of the DPP or DOCD should state that the wells cannot be produced until the CID is approved.

Response: No change. Examples of exploration and development activities that must be covered by a plan are listed in §§ 250.211(a) and 250.241(a), respectively. Mooring piles are considered part of the production platform under § 250.241(a)(3), and, therefore, must be covered by an approved DPP or DOCD before installation. The DPP or DOCD can be approved before CID approval.

Comment: OOC notes that in many cases, a well may be drilled as an exploratory well under an Exploration Plan, and if hydrocarbons in paying quantities are discovered, the well will be completed before demobing [demobilizing] the drilling rig off location. This is especially true for subsea wells. Therefore, OOC suggests the following modifications:

''(2) Development and Production Plan (DPP): You must submit a DPP before you conduct any development and production activities on a lease or unit in any OCS area other than the western GOM. A well may be drilled and completed under an Exploration Plan, but not produced until a DPP has been approved;

''(3) Development Operations Coordination Document (DOCD): You must submit a DOCD before you conduct any development and production activities on a lease or unit in the western GOM. A well may be drilled and completed under an Exploration Plan, but not produced until a DOCD has been approved;

''(5) Conservation Information Document (CID): (ii) Wells drilled and completed under an EP meeting the description of (i)(A) or (B) must file a CID within 60 days of completing the drilling and logging operations. Approved completion operations are allowed to proceed before the approval of the CID. The CID must be approved before production of the well.''

Response: No change. Completion is considered part of the drilling activities and is therefore, covered under an approved EP. Since EP approval is independent of CID approval, completion operations may proceed before CID submittal or approval.

Comment: OOC remarks that under the requirements to have an approved EP, DPP, or DOCD under (6), it is not clear what information would need to be provided in an EP, DPP or DOCD. OOC also states that it is not clear what the difference is between (6)(C) and (6)(D) since under (D) the Regional Supervisor has the right to determine that an EP, DPP, or DOCD is necessary

if the performance standard in § 250.202(e) is not complied with.

Response: No change. The information requirements for OCS plans (including those proposing G&G explorations and development G&G activities) are listed in subpart B. Under paragraph 6(C) (now 6 (iii) in a table), MMS might determine that certain types or classes of G&G explorations or development G&G activities might have a significant adverse effect and by NTL would require that such types or classes be included in an OCS plan. Under paragraph 6(D) (now 6 (iv) in a table), MMS, after receiving notice, might determine that a particular G&G exploration or development G&G activity needs to be covered by an OCS plan.

Comment: OOC also notes that currently under the provisions of NTL 2000–N05, Conservation Information is submitted as a part of supplemental EPs or initial or supplemental DOCDs. It agrees that approval of supplemental EPs or DOCDs should not be dependent on the approval of CIDs.

Response: MMS agrees that a change was needed. CIDs are no longer submitted as part of an Initial or Supplemental DOCD. However, a lessee or operator must submit a CID when it submits an Initial DOCD or Supplemental DOCD for any development of a lease or leases located in water depths greater than 400 meters (1,312 feet). The CID must be approved before production begins.

Section 250.201(c) Limiting information.

Comment: Florida requests clarification of the requirements for limiting information by adding the words ''for a similar activity or a similar environment.''

Response: MMS added the word ''applicable.''

Comment: Ms. Peeler requests submission of a 'comprehensive environmental management strategy', and that MMS and operators should be working under a comprehensive environmental management plan.

Response: No change. This is beyond the scope of subpart B.

Comment: Florida requests adding § 250.201(c)(5) in order to not relieve the operator or MMS of the responsibility to transmit necessary data.

Response: No change. The rule should not impose requirements on the agency. MMS is fully aware of its responsibility to ensure that we do not eliminate information from a plan that is required by a State and that the required State information is received before MMS deems a plan submitted. MMS is also aware of its responsibility to send necessary data and information to the affected States.

Section 250.201(d) Referencing.

Comment: OOC fully supports referencing information and data previously submitted or otherwise readily available to MMS. However, in practice, OOC finds that many times MMS requires duplicative information to be submitted. It presumes this is for the reviewers' convenience so the reviewer does not have to locate material in other plans and in MMS files. The OOC encourages MMS to utilize previously submitted information whenever possible.

Comment: Florida requests that additional language be added to the rule regarding referenced material.

Response: No change. MMS is required to provide ''complete'' copies of plans and accompanying information, including CZMA necessary data and information, to reviewing agencies and to the public. If documents are referenced from previous submittals, MMS will make those documents or their location (library, website, etc.) available to the agencies/public upon request.

Section 250.203 Where can wells be located under an EP, DPP or DOCD?

Comment: OOC recommends that (b) be changed to ''Recovering optimum reserves;'' stating that economics should always be considered in the recovery of hydrocarbons.

Response: No change. The use of the word ''reserves'' by OOC implies that the reservoir has been penetrated by a well. However, there are cases when lessees and operators submit EPs, DPPs, and DOCDs where it is obvious that there is lease line stacking by a number of wells targeting resources (*i.e.*, no prior well penetration) common with adjacent leases. This potentially presents a drainage problem that MMS tries to rectify before the wells are drilled. MMS agrees with OOC that ''economics'' should always be considered in the recovery of hydrocarbons. However, MMS cannot make a decision that resources (based solely on seismic data) are economic and tell a company where a well should be drilled. Further, MMS cannot, and does not, require a company to drill or produce a well that is not economic.

Comment: OOC remarks that it is unclear how this matches up with the requirements for and approval of the CID for development plans. If MMS is reviewing this information under the DPP or DOCD and then again under the CID, it appears that MMS is doing duplicative work.

Response: No change. The CID is only for deep water. These are factors MMS will consider, not information that the operator must submit.

Comment: OOC asks for an explanation of the difference between (c) [number of wells that can be economically drilled for proper reservoir management] and (i) [drilling of unnecessary wells].

Response: No change. The following example is offered as an explanation of the difference between paragraphs (c) and (i): The Regional Supervisor's analysis shows that a reservoir could support a maximum of three wells. Two wells are producing on Lease A, and one well is producing on Lease B. All of the wells are producing from the same reservoir. In essence, this is the proper ''number of wells that can be economically drilled for proper reservoir management'' (paragraph (c)).

However, the operator of Lease B proposes to economically drill another well solely to counter possible drainage by Lease A. The drilling of this well would not increase the ultimate recovery or contribute additional hydrocarbon reserves. Even though the well is economic, it was established that the reservoir can only support a maximum of three wells. Therefore, the drilling of this fourth well would be unnecessary. In deciding whether to approve a proposed well location the Regional Supervisor will consider factors including the ''drilling of unnecessary wells'' (paragraph (i)).

Section 250.206(a) Number of copies.

Comment: OOC comments that since the number of copies may change from time to time, and may be different for various plans, it may be more appropriate to put the details in an NTL. In the GOMR, for example, NTL No. 2002-G08 (now NTL No. 2003-G17), clarifies that not all plans require 8 public information copies.

Response: No change. The Office of Management and Budget (OMB) requires that agencies justify for OMB approval if the agency requires more than an original and two copies of any response. It is appropriate that the maximum number of copies be specified through rulemaking.

Section 250.206(b) Mailing addresses.

Comment: OOC comments that since MMS addresses may change from time to time, it may be less burdensome to provide this information in a NTL and alleviate the necessity for a rulemaking effort to change an address.

Response: MMS agrees and has deleted the addresses.

Section 250.206(c) Electronic submission.

Comment: OOC comments that the regulation should not include a provision requiring electronic submittals when no details of the requirements have been provided for comment. This should be the subject of a subsequent rulemaking if electronic submittals are required.

Response: MMS agrees and made appropriate changes.

Comment: OOC supports the options for voluntary electronic submittals that have been provided in NTL No. 2002 G–08 and supports including this information in the regulation.

Response: An administrative and procedural NTL will be issued shortly after the effective date of the rule. It will contain guidance on electronic submittals according to Section 250.190(a)(3).

Comment: OOC is concerned over the details on how electronic submittals are handled by MMS. How will the confidential information be handled and be secured? How will the information be made available to the various MMS reviewers? Will the information be released in an electronic format to other federal agencies and state agencies?

Response: MMS will continue to protect confidential and proprietary information according to the Freedom of Information Act (FOIA) and its implementing regulations.

Comment: Florida recommends adding ''Electronic submission to affected States will require consultation with the Regional Supervisor and concurrence of an affected State.''

Response: MMS does not agree. MMS will consult with affected States (and already has with Texas and Louisiana) to work out details of the electronic submission process. This is a procedural matter to be worked out between government agencies, not a matter of concern to a plan submitter, and does not belong in the rule.

Section 250.207(a) Geological and geophysical explorations and development geological and geophysical activities.

MMS has deleted the phrase, ''except those that must be covered by an EP, DPP, or DOCD under 30 CFR 250.201(a)(6), or 250.209'' to show that a geological or geophysical exploration or a development geological or geophysical activity remains an ancillary activity even when it is required to be covered by an OCS plan. This change resulted from an internal MMS review of the proposed regulation, not from an outside comment.

Section 250.208 If I conduct ancillary activities, what notices must I provide?

Comment: OOC assumes that the notices required for those activities that are conducted on individual leases are similar to the ones covered under 30 CFR part 251 for unleased areas or areas leased to third parties.

Response: This is a correct assumption.

Comment: Florida requested addition of the word ''specific'' before ''type(s) of operations'' in (a)(2).

Response: MMS agrees and added the word ''specific.''

Comment: OOC assumes that this notice requirement does not apply to shallow hazard surveys or any of the other ancillary activities (other than geological and geophysical explorations and development geological and geophysical activities) identified in § 250.207(a). Based on the language in § 250.208(b)(1), OOC assumes that MMS cannot require notices for the other listed ancillary activities in § 250.207 without a change in regulation. If this is not correct, then OOC strongly objects to a 30-day notice period for the other listed ancillary activities. This would be extremely burdensome and slow down reserve development.

Response: This is not a correct assumption; see response to next comment. MMS is retaining the authority under § 250.208(b)(1) to require notice for any other ancillary activity, including shallow hazard surveys. If such a notice is required, MMS will review the notice to determine if the ancillary activity complies with certain performance standards in accordance with § 250.209. If MMS concludes that the activity does not comply with those standards, MMS will require the lessee or operator to submit an OCS plan. In that case, the ancillary activity cannot be conducted until MMS approves the OCS plan. In addition, MMS changed § 250.208(b)(1) to provide for a 15-day notice period if a notice for another listed ancillary activity (*i.e.*, those described in § 250.207(b) and (c)) is required.

Comment: OOC states that the requirement in § 250.208(b)(1) is very broad and confusing. What other activities could be considered ancillary activities?

Response: The other types of ancillary activities are stated in § 250.207(b) and (c). The notice period is 15 days.

Comment: OOC states that § 250.208(b)(2) is an overly broad requirement and lacks sufficient detail for it to appropriately comment. Under what circumstances would this be done? Who would they be required to notify? How would it be done? What would be the timeframe for the notice? They believe that this requirement should be deleted from the regulation and be covered under a separate rulemaking if notice is to be required.

Response: No change. Depending upon the nature of the ancillary activity (*e.g.*, the use of explosives), it may be appropriate for the lessee or operator to notify other users of the area such as a military facility or other lessees, operators or G&G permittees. If this provision is invoked, guidance on the procedures for these notices will be provided either on a case-by-case basis or in a revised NTL.

Comment: Regarding § 250.208(b)(2), Florida requests a discussion of the method of notification.

Response: No change. If necessary, this type of guidance will be provided either on a case-by-case basis or in a revised NTL.

Section 250.210(a) Reporting.

Comment: OOC asks when MMS will require that a report be submitted. How much time would the operator have until the report was due? What would be the required analysis? What would be data or information derived from the ancillary activities? Would it be held confidential? This requirement is overly broad without enough detail to properly comment. OOC recommends that MMS remove this from the proposed regulation and cover it in a subsequent rulemaking when sufficient information is available for comment.

Response: No change. MMS believes that sufficient information was available in the proposed rule and current NTLs for an adequate review of this section and, consequently, did not remove it for consideration under subsequent rulemaking. Guidance regarding when reports on ancillary activities will be required and due, and their contents, will continue to be addressed in various NTLs. Information from reports of G&G explorations and development G&G activities enables MMS to prepare for lease sales and conduct fair market value determinations. Information from other ancillary activities enables MMS to adequately review EPs, DPPs, and DOCDs. When applicable, data and information submitted to MMS will be held confidential in accordance with § 250.196(b). MMS added this confidentiality statement in a new paragraph (c) in § 250.210.

Section 250.210(b) Data or information retention.

Comment: OOC does not believe that it is appropriate for MMS to require operators to retain copies of all information derived from ancillary activities. Many times, there may be studies that are used for purposes other than exploring or developing a lease that a lessee or operator should not have to retain. OOC does not object to retaining the raw data and making it available to MMS.

Response: MMS limited the requirement to retain information to that obtained during G&G explorations and development G&G activities. MMS may need this information to evaluate leases and plan for lease sales at any time during the life of the lease or unit. Even though the rule does not require the retention of data and information from other ancillary activities, MMS suggests that lessees and operators consider retaining data and information because the lessee or operator may need to include that data and information in supplemental or revised EPs, DPPs, and DOCDs (*e.g.*, high resolution seismic lines under §§ 250.214(g) and 250.244(g)).

Section 250.211(a) Description, objectives, and schedule.

Comment: For overall clarity, OOC recommends that the seismic activity language be moved from this section to § 250.207(a).

Response: MMS agrees. MMS has deleted the reference to seismic activities in the MMS Alaska and Pacific OCS Regions since the process to handle these activities is sufficiently delineated in §§ 250.207 through 250.210.

Comment: OOC recommends including well completion (not production) as an example of an exploratory activity.

Response: No change. A well completion is an extension of the exploration drilling activity and does not need to be covered as a separate activity under an EP.

Section 250.211(b) Location.

Comment: OOC believes there is no purpose in showing the water depth of the bottom hole location and, therefore, that information should not be required.

Response: MMS made the recommended change. MMS agrees that the bottom hole location is not needed on the location map.

Comment: OOC asks whether bathymetry information be provided in a table instead of a map.

Response: No change. A location plat is required for MMS evaluation and State consistency review.

Section 250.211(c) Drilling unit.

Comment: OOC believes that it is overly burdensome and serves no meaningful purpose to provide the required information for fuels, oil, and lubricants that are stored on the facility in very small quantities. It recommends that the rule be limited to fuels, oil and lubricants that are stored in quantities greater than 25 barrels.

Response: For the GOMR, due to the large number of very similar plans that are routinely submitted, MMS agrees that listing smaller volumes of stored fuels, oil, and lubricants is overly burdensome. The volume thresholds are stated in the interpretive guidance in the accompanying GOMR NTL, not in this part of the rule.

Comment: OOC notes that in many cases at the time an EP is filed, the specific rig or rigs to be utilized has or have not been contracted. Therefore, only generic information that pertains to the type of rig to be utilized is provided. OOC also notes that the specific rig and equipment particulars are identified in the APD for the well to be drilled. OOC believes that this is the appropriate application to provide this information.

Response: No change. If the specific rig has not been contracted, the maximum in the class should be provided. MMS requires this information to assess environmental impacts and for State coastal zone consistency review.

Comment: OOC suggests that if an MMS regional office needs specific information on rigs operating within the region, MMS should collect the information one time and maintain a file for the rig. If a rig is brought into the MMS region, the file could be updated.

Response: No change. However, MMS encourages industry to establish a regional rig file that a lessee or operator could access on the Internet and reference under § 250.201(d).

Section 250.213(b) Drilling fluids.

Comment: OOC notes that in many cases, several different mud systems with different chemical composition and components will be utilized during the course of a well. At the time that the EP is filed, the specific mud program for each well may not have been developed. OOC recommends that this section be changed to the following: ''(b) Drilling fluids. A table showing the projected amounts for each of the types (*i.e.*, water based, oil based, synthetic based) of drilling fluids you may use to drill your proposed exploration wells.''

Response: MMS agrees and has provided clarification.

Comment: OOC requests an explanation of the term ''rates of usage.''

Response: For clarification, MMS changed the term ''rates of usage'' to ''discharge rate.''

Section 250.213(c) Chemical products.

Comment: OOC comments that following the issuance of NTL No. 2000–G21, a study was conducted on chemical products usage in the GOM in lieu of this information being submitted in each plan. Therefore, it recommends that the GOM be exempt from this requirement.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Comment: OOC comments to the NTL point out that the NTL requires ''Oils Characteristics'' and there is no corresponding reference in the rule for EPs. OOC also notes that detailed information is unknown at the EP stage.

Response: MMS agrees with OOC. Since no reference to Oils Characteristics for EPs is in the rule, the provision in the MMS GOMR NTL to provide such information for EPs has been deleted.

Section 250.213(d) New or unusual technology.

Comment: OOC comments that in many cases, the use of new or unusual technology includes the use of proprietary information. Therefore, it recommends that the following statement be added to the regulation: ''In the public information copies of your EP, you may exclude any proprietary information from this description. In that case, include a brief discussion of the general subject matter of the omitted information. If you will not use any new or unusual technology to carry out your proposed activities, include a statement so indicating.''

Response: MMS agrees and has adopted the language.

Section 250.213(e) Bonds, oil spill financial responsibility, and well control statements.

Comment: OOC recommends that MMS allow lessees or operators to delay furnishing bonds and evidence of oil spill financial responsibility until after the EP has been approved, but before the proposed activities are approved or permitted. Therefore, OOC recommends adding the following statement to (1): ''In lieu of providing bonds and making this statement, you may request, in writing, to delay furnishing the required bond coverage until after your EP or DOCD is approved but before your proposed activities are approved or

permitted. Refer to 30 CFR 256.53(a)(1)(ii).''

Response: MMS adopted OOC's recommended change and provided a reference to 30 CFR 256 subpart I.

Section 250.213(g) Blowout scenario.

Comment: Florida recommends adding the word ''maximum'' to qualify ''timeframe.''

Response: MMS reworded for clarity and added ''maximum duration.''

Section 250.214(g) High-resolution seismic lines.

Comment: OOC questions the necessity of providing two intersecting seismic lines.

Response: MMS agrees that only the closest line is needed and made the appropriate change.

Comment: OOC recommends adding the following statement: ''You are not required to provide this information if the surface location of your proposed well has been approved in a previously submitted EP, DPP, or DOCD.''

Response: MMS agrees with OOC and adopted the proposed language.

Section 250.214(j) Geochemical information.

Comment: OOC recommends that the GOM should be specifically excluded from this requirement.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.214(k) Future G&G activities.

Comment: OOC recommends that the GOM should be specifically excluded from this requirement.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.215(a) Concentration.

Comment: OOC recommends that this should be required only when the area has been classified as H_2S present. Otherwise you will not know the concentration.

Response: No change. The rule requires only an estimate, not a known concentration.

Section 250.216 What biological, physical, and socioeconomic information must accompany the EP?

Comment: Florida recommends deleting ''if you obtain'' and replace with ''you must obtain.''

Response: No change. MMS does not require this type of information to be collected. However, if the lessee or operator independently collects it during the development of the EP, then it must accompany the EP.

Section 250.216(b) Physical environment reports.

Comment: OOC notes that in the GOM, limited site-specific meteorological data (temperature, wind, etc.) may be collected, but not necessarily in any formal, organized, or scientific fashion and should not have to be submitted. Therefore, it recommends that this requirement be eliminated for the GOM. Similarly, OOC notes that limited physical oceanographic information may be collected, but not necessarily in any formal, organized, or scientific fashion. This data should not have to be submitted. Therefore, OOC recommends that this requirement be eliminated for the GOM.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR. According to the NTL, this information is not required to accompany EPs in the GOMR. However, in the Eastern Planning Area of the GOMR, a discussion of air and water quality in and adjacent to the proposed activities is required. For clarity, MMS replaced ''archaeological information'' with ''archaeological reports if required under § 250.194.''

Section 250.216(c) Socioeconomic study reports.

Comment: OOC requests that this requirement not apply to the GOM.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR. According to the NTL, this information is not generally required to accompany EPs in the GOMR. However, if the proposed activities have socioeconomic implications for the State of Florida, certain information is required.

Section 250.217(a) Projected wastes.

Comment: OOC notes that providing the quantity of a waste either annually or monthly may be difficult to estimate. An appropriate unit of measure should be utilized which could include on a per well or per person basis. The chemical product wastes should be limited to ''treating'' chemicals (not include housekeeping, etc. chemical wastes.)

Response: MMS agrees to delete ''annual or monthly.'' MMS made no change with regard to projected waste '' MMS may want to require information regarding other projected wastes. MMS requires the information for NEPA and CZMA purposes.

Section 250.217(e) Projected cooling water intake.

Comment: OOC requests that this requirement be removed from the regulation. This is premature since the Environmental Protection Agency has not adopted final regulations pertaining to cooling water intake structures used for exploratory activities.

Response: MMS included information collection requirements for cooling water intake structures to more fully comply with the NEPA, its implementing regulations issued by the CEQ at 40 CFR parts 1500 through 1508, and policies of DOI and MMS. According to NEPA requirements, MMS must prepare an EA in connection with its review of plans for activities on the OCS. The contents of plans must be sufficient to support a sound analysis of potential environmental impacts that may result from the proposed activity. As required by NEPA, if the EA concludes that significant impacts will result from the proposed activity, MMS will prepare an EIS.

MMS does not agree with the commentor that this action is premature; MMS's responsibilities under NEPA are independent of the Environmental Protection Agency (EPA) Clean Water Act (CWA) § 316(b) rulemaking on cooling water intake structures. As previously stated, MMS is required by NEPA to assess potential environmental impacts that may result from the proposed activity.

See *http://www.epa.gov/waterscience/316b/index.html* for more information on EPA's CWA § 316(b) rulemakings.

Section 250.218(a) Projected emissions.

Comment: Ms. Peeler states that MMS should require planning documents to address greenhouse gases and establish a monitoring system to assure greenhouse gas emission levels are not exceeded.

Response: No change. The Clean Air Act (CAA) does not address greenhouse gas emissions. Neither MMS nor the Environmental Protection Agency (EPA) presently has the authority to require limits on greenhouse gas emissions from specific projects.

Comment: Ms. Peeler requests establishing an emission/discharge trading program.

Response: No change. Emission offsets are covered under § 250.303(i).

Comment: OOC notes that emission factors (EF) for PM_{10} and $PM_{2.5}$ based upon natural gas fired units measured by conventional EPA methods are probably high by a factor of 10–50 based upon recent DOE/API studies. Current MMS–138 and MMS–139 forms use an EF of 7.6 lbs of PM (Total) per 10^6 scf. (AP–42, Table 1.4-2, July 1998). It is assumed that all the PM is less than 1.0 microns in diameter. Why speciate PM when EF are of such poor quality?

Response: Since the Breton Offshore Activities Data System (BOADS) study and EPA's AP–42 document use 7.6 pounds per million cubic feet (MMCF), MMS will maintain this value. MMS will revise the emission factors once official updated values are available.

Section 250.218(b) Emission reduction measures.

Comment: Ms. Peeler makes reference to 43 U.S.C. 1347(b) and best available and safest technology (BAST).

Response: No change. Sections 250.107(c) and (d) implement this requirement.

Section 250.219(a) Oil spill response planning.

Comment: With respect to paragraph (a)(2)(iii), since Oil Spill Removal Organizations (OSROs) are included in the regional Oil Spill Response Plan (OSRP), OOC asks why they have to be named in each EP. With respect to paragraph (a)(2)(iv), OOC inquires regarding the purpose of providing a comparison between the site specific worst case discharge and that in the regional OSRP.

Response: No change. The information required under paragraph (a)(2)(iii) is necessary for all States to use in their CZMA consistency reviews. MMS uses the information required under paragraph (a)(2)(iv) as a streamlined means to ensure compliance with requirements of the Oil Pollution Act of 1990 (OPA 90).

Section 250.221(a) Monitoring systems.

Comment: OOC assumes that this does not include wind, temperature, etc. that are commonly monitored on an informal basis.

Response: No change. A monitoring plan might include this type of information.

Section 250.221(b) Flower Garden Banks National Marine Sanctuary.

Comment: For clarity and completeness, OOC recommends that this language be moved to § 250.219(c).

Response: No change. This is not spill information, it is monitoring information.

Comment: OOC requests modification to ''a description of your provisions for monitoring the impacts of an oil spill on the environmentally sensitive resources at the Flower Garden Banks National Marine Sanctuary.''

Response: MMS agrees and has reworded for clarity.

Section 250.223 What mitigation measures information must accompany the EP?

Comment: OOC notes that the language used seems to indicate that such measures will be utilized. They suggest the following language: ''If you propose to use any measures beyond those required by the regulations in this part to minimize or mitigate environmental impacts from your proposed exploration activities, provide a description of the measures you will use in your EP.''

Response: MMS agrees and used the recommended language.

Section 250.224(a) General.

Comment: OOC requests clarification of the term ''offshore vehicle.''

Response: An offshore vehicle is a vehicle that is capable of being driven on ice. See definition.

Section 250.224(b) Air emissions.

Comment: For clarity and completeness, OOC recommends that this requirement be moved to the air emission section in § 250.218.

Response: No change. The regulations are organized in a manner that addresses air emissions based on source. There is no single section that includes all air information requirements.

Section 250.224(c) Drilling fluids and chemical products transportation.

Comment: OOC would like this requirement to be specifically eliminated for the Western and Central GOM.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR. According to the NTL, this information is not required to accompany EPs in the Western and Central Planning Areas of the GOMR.

Section 250.224(d) Solid and liquid wastes transportation.

Comment: OOC asks for the purpose of giving the reason for transportation, because these are already classified as wastes.

Response: MMS agrees and deleted ''the reason for transportation.''

Comment: OOC asks whether the destination being requested is the shore base or the ''final'' disposal, reuse, or recycling location. OOC suggests that the destination being requested be considered the shore base. In many instances, the ''final'' destination is not known, particularly for trash that is placed in a common bin at the shore base.

Response: No change. The final destination is the place where the operator transfers the waste to an entity that will receive, reuse, recycle, or dispose of the waste.

Comment: OOC notes that the composition and quantities are estimates only and based on typical estimates from similar drilling operations. Also, the destination of the waste is based on pre-planning only and may change during the actual activities conducted under the EP.

Response: MMS concurs that these are estimates.

Comment: OOC states that given that this information is based on typical wastes and disposal for similar operations, it fails to see the necessity of providing the information in each plan. Of equal or more value could be a waste management study across industry for various activities.

Response: If such an industry-wide waste management study is completed, it may be referenced under § 250.201(d).

Section 250.224(e) Vicinity map.

Comment: OOC suggests adding the word ''primary'' before ''routes.'' In many cases, an alternate route may be taken depending on environmental conditions, visiting multiple platforms, etc.

Response: MMS agrees and made the appropriate change.

Section 250.225(a) General.

Comment: Florida requests additional language regarding onshore facilities.

Response: MMS agrees and added additional language as follows: Describe any State or Federal permits or approvals (dredging, filling, etc.) that would be required for constructing or expanding them.

Section 250.225(b) Air emissions.

Comment: OOC requests that EPs in areas westward of 87°30′W longitude in

the GOM be specifically excluded from this requirement.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR. According to the NTL, this information is not required to accompany any EPs in the GOMR.

Section 250.225(c) Unusual solid and liquid wastes.

Comment: Florida requests a definition of ''unusual wastes.''

Response: Unusual wastes are those wastes not specifically addressed in the relevant National Pollutant Discharge Elimination System (NPDES) permit.

Comment: OOC requests that EPs in the GOM be specifically excluded from this requirement.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR. According to the NTL, this information is not required to accompany any EPs in the GOMR.

Section 250.225(d) Waste disposal.

Comment: For clarity and completeness, OOC suggests that this requirement be included with § 250.224(d) since much of this information appears to be duplicative of that required in § 250.224(d).

Response: No change. The regulation is organized in a manner that addresses wastes based on source. There is no one section that includes all waste information requirements.

Section 250.226 What CZMA certification must accompany the EP?

Comment: OOC could not locate 15 CFR 930.76(d) and requested the correct citation.

Response: No change. This citation is correct.

Section 250.227(a) General requirements.

Comment: OOC requests an explanation of how the requirements listed in § 250.227(b) assist the Regional Supervisor in complying with NEPA and other relevant Federal laws.

Response: No change. The Environmental Impact Analysis (EIA) assists MMS in each and every EP submittal to determine, based on the project-specific impact analysis provided by the lessee or operator for his project, if there is an exception to the DOI's listing of categorical exclusions. The lessee or operator is in the best position to determine the environmental effects of its proposed activity based on whether the operation is routine or non-routine. The lessee or operator must be able to evaluate the nature and extent of any environmental implications of its proposed exploration activities.

Section 250.227(b) Resources, conditions, and activities.

Comment: In (4), OOC asks for a definition of ''critical habitat.''

Response: MMS reworded the rule to clarify. The definition for ''critical habitat'' is: (i) The specific areas within the geographical area currently occupied by a species, at the time it is listed in accordance with section 4 of the Endangered Species Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) which may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. (See 64 FR 31871.)

Comment: OOC requests that the GOM be specifically excluded from the requirement in (7).

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR. According to the NTL, this information is not typically required to accompany any EPs in the GOMR.

Section 250.227(c) Environmental impacts.

Comment: OOC requests that the reference to cooling water intake structures be removed since EPA has not issued final regulations for these structures.

Response: Not adopted. See response to § 250.217(e).

Section 250.228(a) Exempted information description (public information copies only).

Comment: An OOC comment on the NTL questions the need for this information.

Response: No change. The information is necessary to provide a general overview of what has been excluded from the public information copy for those reviewers who cannot get access to proprietary data.

Section 250.228(b) Bibliography.

Comment: An OOC comment on the NTL questions the need for this information, stating that MMS has this information already.

Response: No change. This provision does not require a list of all plans, reports, etc. It requires only a list of those that have been referenced in the EP.

Section 250.231(a) Determine whether deemed submitted.

Comment: OOC asks for the basis for increasing the timeframe from 10 days to 15 days. It requests that EPs be deemed submitted within 10 days.

Response: No change. The additional working days are necessary because of increased review time as described in the preamble to the proposed rule (67 FR 35373).

Comment: OOC requests an explanation of the term ''sufficiently accurate'' in (1).

Response: Sufficiently accurate means in a manner that is enough to meet the needs of a situation or proposed end.

Comment: OOC requests that when the plan has been ''deemed submitted,'' the contact person be notified by fax, letter, or e-mail.

Response: MMS made the recommended change.

Section 250.231(b) Identify problems and deficiencies.

Comment: OOC asks when and how the Regional Supervisor will notify you that your plan has a deficiency. It suggests that the notification occur within the timeframe established in § 250.231(a). OOC requests that the notification be made to the contact person by fax, letter, or e-mail.

Response: MMS made the recommended change to provide a time frame for response. The method of notification will continue to be by phone, fax, letter, or e-mail.

Section 250.232(a) State and CZMA consistency reviews.

Comment: In lieu of ''receipted'' mail, OOC requests that the public information copy be sent by ''overnight'' mail. It believes that the cost differential between receipted mail and overnight mail is not significant. If MMS believes the cost is prohibitive, then MMS may request the operator to provide a completed air bill at the expense of the lessee or operator. Sending the public information copy by overnight mail will significantly speed up the CZMA process. Alternatively, if the operator provides a complete public information copy in an electronic format, it could be e-mailed.

Response: MMS made changes to allow alternative methods.

Section 250.232(d) Amendments.

MMS made changes as a result of its internal review of the proposed regulation, to clarify that some major amendments proposed by the lessee or operator may require a deemed submitted review.

Section 250.235(a) Amend your EP.

Comment: OOC notes that if MMS has approved the EP, then the plan would need to be revised, not amended.

Response: No change. EPs already approved are addressed under § 250.281(d)(3).

Section 250.241(b) Location.

Comment: OOC believes there is no purpose in showing the water depth of the bottom hole location, and this information should therefore not be required.

Response: MMS agrees and has made the recommended change.

Comment: OOC asks for the purpose of showing this information on a bathymetry map. Showing the information in a table should be sufficient and a map should not be required.

Response: No change. A location plat is required for MMS evaluation and State CZMA consistency review.

Section 250.241(c) Drilling unit.

Comment: OOC believes that it is overly burdensome and serves no meaningful purpose to provide this information for fuels, oil, and lubricants that are stored on the facility in very small quantity. It recommends that this be limited to fuels, oil, and lubricants that are stored in quantities greater than 25 barrels.

Response: No change. The Pacific and Alaska OCS Regions have no established minimum volume. However, in the companion NTL, the GOMR has established a minimum volume of 25 bbls for all purposes.

Comment: OOC notes that in many cases at the time an EP [DPP or DOCD] is filed, the specific rig or rigs to be utilized have not been contracted. Therefore, only generic information that pertains to the type of rig to be utilized is provided. The APD for the well to be drilled identifies the specific rig and equipment particulars. OOC believes that the APD is the appropriate application to provide this information.

Response: No change. If the specific drilling rig has not been contracted, the maximum for the class of rig should be provided. MMS needs the information to assess environmental impacts.

Comment: OOC suggests that if an MMS regional office needs specific information on rigs operating within the region, the regional office should collect the information one time and maintain a file for the rig. If a rig is brought into the MMS region, the file could be updated.

Response: No change. However, MMS encourages the industry to establish a regional rig file that a lessee or operator could access on the Internet and reference under § 250.201(d).

Section 250.241(d) Production facilities.

Comment: Florida requests definition of ''other facilities.''

Response: No change. ''Other'' refers to any production facility not listed.

Section 250.243(b) Drilling fluids.

Comment: OOC notes that in many cases, several different mud systems with different chemical composition and components will be utilized during the course of drilling a well. At the time the DPP or DOCD is filed, the specific mud program for each well may not have been developed. They recommend that this section be changed to the following: ''(b) Drilling fluids. A table showing the projected amounts for each of the types (*i.e.*, water based, oil based, synthetic based) of drilling fluids you may use to drill your proposed exploration (sic) wells:'

Response: MMS agrees and made the necessary clarification.

Comment: OOC requests an explanation of the term ''rates of usage.''

Response: MMS changed the term ''rates of usage'' to the term ''discharge rate.''

Section 250.243(c) Production.

Comment: OOC asks why MMS needs the average production rate. How is it utilized? The reservoirs may have different lives. They suggest that it should be the life of the project.

Response: This average production rate is used to determine if the proposed production in the DPP or DOCD is a candidate for royalty in kind (RIK). MMS deleted the requirement for submitting a production decline curve in paragraph (c)(1).

Section 250.243(d) Chemical products.

Comment: OOC notes that following the issuance of NTL No. 2000-G21, a study was conducted on chemical products usage in the GOM in lieu of this information being submitted in each plan. Therefore, the GOM should be specifically exempt from this requirement.

Response: No change to the rule. The rule applies to all Regions, and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.243(e) New or unusual technology.

Comment: OOC notes that in many cases, the use of new or unusual technology includes the use of proprietary information. Therefore, it recommends that the following statement be added to the regulation: ''In the public information copies of your DPP or DOCD, you may exclude any proprietary information from this description. In that case, include a brief discussion of the general subject matter of the omitted information. If you will not use any new or unusual technology to carry out your proposed activities, include a statement so indicating.''

Response: MMS agrees and made the recommended change.

Section 250.243(f) Bonds, oil spill financial responsibility, and well control statements.

Comment: OOC recommends delaying the requirements to furnish bonds and evidence of oil spill financial responsibility until after the DPP or DOCD has been approved, but before the proposed activities are approved or permitted. Therefore, it recommends adding the following statement to (1): ''In lieu of providing bonds and making this statement, you may request, in writing, to delay furnishing the required bond coverage until after your EP, DPP, or DOCD is approved but before your proposed activities are approved or permitted. Refer to 30 CFR 256.53(a)(1)(ii).''

Response: MMS adopted OOC's recommended change and provided a reference to 30 CFR part 256 subpart I.

Section 250.243(g) Suspensions of production or operations.

Comment: OOC requests that this be limited to a SOP or SOO that has been granted. You may not be able to anticipate that you will need an SOP or SOO at the time the DOCD is filed.

Response: No change. If you do not anticipate the need for a suspension at the time you file a DOCD, indicate that none are anticipated.

Section 250.243(h) Blowout scenario.

Comment: Florida recommends adding ''maximum timeframe.''

Response: MMS made an equivalent change by adding the words ''maximum duration.''

Section 250.244(h) Stratigraphic column.

Comment: OOC recommends that the Western and Central GOM be specifically excluded.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.244(i) Time-versus-depth chart.

Comment: OOC recommends that the Western and Central GOM be specifically excluded.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.244(j) Geochemical information.

Comment: OOC recommends that the GOM should be specifically excluded.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.244(k) Future G&G activities.

Comment: OOC recommends that the GOM should be specifically excluded.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.245(a) Concentration.

Comment: OOC recommends that this information should only be required when the area has been classified as H_2S present. Otherwise you will not know the concentration.

Response: No change. The rule requires an estimate, not a known concentration.

Section 250.245(d) Modeling report.

Comment: OOC believes that the requirement in (3) for specific modeling of how any H_2S at any concentration, no matter how low, affects an onshore area is too restrictive. This should be limited to cases where the H_2S concentration is greater than 10 parts per million at an onshore location.

Response: MMS replaced the word ''area'' with the word ''location'' in paragraph (3) and made the necessary changes.

Section 250.246 What mineral resource conservation information must accompany the DPP or DOCD.

Comment: OOC recommends that the Central and Western GOM be specifically excluded.

Response: MMS does not agree with this statement. This regulation should apply to all GOMR leases when a DPP, DOCD, or any supplemental plan is filed as required under the regulation. Subpart K (specifically § 250.1107) requires a lessee to ''timely initiate enhanced oil and gas recovery operations for all competitive and non-competitive reservoirs where such operations would result in an increased ultimate recovery of oil or gas under sound engineering and economic principles.'' Therefore, lessees and operators should have considered enhanced recovery techniques as early as initial production. Since, by regulation, the submittal and approval of a DPP or DOCD is a requirement before the commencement of production, this is the proper place for this information to be reported.

Section 250.246(a) Technology and reservoir engineering practices and procedures.

Comment: OOC recommends that this requirement be limited to engineering practices and procedures you propose to use in your DPP or DOCD.

Response: MMS made the recommended change by replacing ''may'' with ''will.'' The information provided for §§ 250.246(a) and 250.246(b) should depend upon the intent of the lessee or operator. If the lessee or operator intends to initiate recovery practices in conjunction with the onset of production, the lessee or operator should be very specific in responding to (a) and (b), since the lessee or operator has already evaluated the most efficient technique and plans to immediately put that particular technique into practice. However, if the lessee or operator does not propose using enhanced recovery practices at the onset of production, a general statement is needed explaining the methods considered and the reasons why they are not going to be used. The change accomplishes this.

Section 250.246(b) Technology and recovery practices and procedures.

Comment: OOC recommends that this requirement be limited to technology and recovery practices and procedures you propose to use in your DPP or DOCD.

Response: See comment for § 250.246(a) above, and MMS' response.

Section 250.246(c) Reservoir development.

Comment: OOC asks why this information is requested. The DOCD contains the development plan. MMS already has the well logs, etc.

Response: No change. The information in the DOCD is compared to the CID for consistency and for additional data not required in the CID (*e.g.*, activity schedules). The proposed well names, estimated field life and reserves, and the structure map with the target sand and designated boreholes are also checked to assure consistency with the CID. However, a CID is submitted only when any portion of a development project is in water depths greater than 400 meters (1,312 feet); therefore, this information must be submitted in the DOCD to assure that all leases are addressed. The Regional Supervisor is authorized to approve well locations and spacing programs necessary for proper reservoir development in leased areas. In approving or disapproving such projects, the Regional Supervisor gives consideration to, among other things, the geology and reservoir characteristics, completion techniques, the number of wells that can be economically drilled, optimum recovery of resources, minimization of environmental risk, the protection of correlative rights, and the drilling of unnecessary wells.

Section 250.247 What biological, physical, and socioeconomic information must accompany the DPP or DOCD.

Comment: Florida recommends deleting ''if you obtain'' and replacing with ''you must obtain, if available.'' See comments on EP.

Response: No change. See comment for § 250.216.

Section 250.247(b) Physical environment reports.

Comment: OOC notes that in the GOM, limited site-specific meteorological data (temperature, wind, etc.) may be collected, but not necessarily in any formal, organized, or scientific fashion. This data should not have to be submitted. Therefore, OOC recommends that this requirement be eliminated for the GOM. Similarly, OOC notes that limited physical oceanographic information may be collected, but not necessarily in any formal, organized, or scientific fashion. This data should not have to be submitted. Therefore, OOC recommends that this requirement be eliminated for the GOM.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR. According to the NTL, this information is not required to accompany any DOCDs in the GOMR. In the Eastern Planning Area of the GOMR, a discussion of air and water quality in and adjacent to the proposed activities is required. Also for clarity, MMS replaced ''archaeological information'' with ''archaeological reports if required under § 250.194.''

Section 250.247(c) Socioeconomic study reports.

Comment: Florida recommends adding ''included related onshore activities.''

Response: MMS deleted ''regarding'' and added ''related to.''

Section 250.248(a) Projected wastes.

Comment: OOC notes that providing the quantity of a waste either annually or monthly may be difficult to estimate. An appropriate unit of measure should be utilized (which could include on a per well or per person basis).

Response: MMS made the recommended change by deleting ''annual or monthly.''

Comment: OOC recommends that the chemical product wastes be limited to ''treating'' chemicals, not including housekeeping and similar chemical wastes.

Response: No change. The information is needed for NEPA and CZMA purposes.

Comment: Florida requests discussion of ''onshore'' plans for disposal.

Response: No change. This information is contained in § 250.258(d).

Section 250.248(b) Projected ocean discharges.

Comment: OOC asks for clarification of the term ''discharge method.''

Response: Discharge methods include shunting through a downpipe, adding to a produced water stream, etc.

Section 250.248(c) National Pollutant Discharge Elimination System (NPDES) permit.

Comment: OOC recommends that the GOM be specifically excluded from the requirement in (1).

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR. According to the NTL, this information is not required to accompany any DOCDs in the GOMR.

Section 250.248(e) Projected cooling water intake.

Comment: OOC requests that this requirement be removed from the regulation. This is premature since EPA has not adopted final regulations pertaining to cooling water intake structures used for exploratory activities.

Response: No change. See response to § 250.217(e) above.

Section 250.249(a) Projected emissions.

Comment: OOC notes that emission factors (EF) for PM_{10} and $PM_{2.5}$ based upon natural gas fired units measured by conventional EPA methods are probably high by a factor of 10–50 based upon recent DOE/API studies. Current MMS–138 and MMS–139 use an EF of 7.6 lbs of PM (Total) per 10^6 scf. (EP–42, Table 1.4–2, July 1998). It is assumed that all the PM is less than 1.0 microns in diameter. Why speciate PM when EF are of such poor quality?

Response: No change. Since the BOADS study and EPA's 2001 document use 7.6 pounds per MMCF, MMS will maintain this value. MMS will revise the emission factors once official updated values are available.

Comment: For (2), OOC asks for a definition of a ''facility modification.''

Response: MMS deleted ''For a facility modification'' and added clarifying language.

Comment: For (4), OOC believes that utilizing the maximum rated capacity of the equipment is unrealistic. The projected emissions should be based on the proposed operational scenario for the proposed activities in the plan. What is considered to be the ''maximum throughput?'' In many cases, de-bottle-necking can occur to increase the ''maximum'' throughput.

Response: No change. If the lessee or operator presents factors to justify emissions based on amounts less than maximum rated capacity, it can request that MMS grant a departure under § 250.142. An example would be fuel certification reports. Maximum throughput may represent a value less than the maximum capacity and can be used as a basis for the estimate of projected emissions.

Section 250.250(a) Oil spill response planning.

Comment: In (iii), OOC asks that since the OSROs are included in the regional OSRP, why do they have to be named in each DPP or DOCD?

Response: No change. It is required by the States for CZMA consistency review.

Comment: In (iv), OOC asks for the purpose of providing a comparison between the site-specific worst case discharge and that in the regional OSRP.

Response: No change. This information is used by MMS as a streamlined means to ensure OPA 90 compliance. It is also required by the States for CZMA consistency review.

Section 250.252(a) Monitoring systems.

Comment: OOC assumes that this requirement does not include wind, temperature, etc. that are commonly monitored on an informal basis.

Response: No change. A monitoring plan might include this type of information.

Section 250.252(b) Flower Garden Banks National Marine Sanctuary.

Comment: For clarity and completeness, OOC recommends that this language be moved to § 250.219(c).

Response: No change. This is not spill information, it is monitoring information.

Comment: OOC asks for modification of ''a description of your provisions for monitoring the impacts of an oil spill on the environmentally sensitive resources at the Flower Garden Banks National Marine Sanctuary.''

Response: MMS reworded this requirement for clarity.

Section 250.254 What mitigation measures information must accompany the DPP or DOCD.

Comment: OOC notes that the language used seems to indicate that such measures will be utilized. They suggest the following language: ''If you propose to use any measures beyond those required by the regulations in this part to minimize or mitigate environmental impacts from your proposed exploration (sic) activities, provide a description of the measures you will use in your DPP or DOCD.''

Response: MMS agrees and made the recommended changes.

Section 250.255 What decommissioning information must accompany the DPP or DOCD.

Comment: OOC questions the necessity of providing this information. Subpart Q contains the requirements for decommissioning. The Western and Central GOM should be specifically excluded.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying

NTL does make the change requested with respect to the GOMR.

Section 250.256 What related facilities and operations information must accompany the DPP or DOCD.

Comment: OOC asks for a definition of ''directly related.''

Response: A directly related facility or operation is one that is not a proposed activity in the DPP or DOCD, but which is necessary to conduct the activities proposed in the DPP or DOCD. ''Directly related'' encompasses wells, platforms, pipelines that carry production to either a transmission pipeline tie-in or processing hub, etc.

Section 250.256(a) OCS facilities and operations.

Comment: For (1), OOC questions the necessity of this information since drilling units are typically not directly related to a specific project.

Response: No change. While a drilling unit is in use, it is part of the facility.

Comment: For (3), OOC notes that in many cases at the time the DOCD is filed, the operator may not know which specific ROW pipeline will be utilized. If the operator can identify the pipeline and the pipeline is operated by another company, then reference to a pipeline application or general information should be sufficient since the operator may not have the other specific information.

Response: No change. The lessee or operator must provide the best available information at the time the DOCD or DPP is filed.

Comment: For (4), OOC requests an explanation of the term ''other facilities and operations.''

Response: No change. This term is used in the OCSLA and represents facilities not covered by § 250.256(a)(1), (2), or (3).

Section 250.257(b) Air emissions.

Comment: For clarity and completeness, OOC recommends that this requirement be moved to the air emission section in § 250.218.

Response: No change. The regulation is organized in a manner that addresses air emissions based on source. There is no one section that includes all air information requirements.

Comment: OOC asks for clarification of the term ''offshore vehicle.''

Response: An offshore vehicle is a vehicle that is capable of being driven on ice. See definition.

Section 250.257(c) Drilling fluids and chemical products transportation.

Comment: OOC recommends that this requirement be specifically eliminated for the Western and Central GOM.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.257(d) Solid and liquid wastes transportation.

Comment: OOC asks for the purpose of giving the reason for transportation—these are already classified as wastes.

Response: MMS agrees and deleted ''reason for transportation.''

Comment: OOC asks whether the destination being requested is the shore base or the ''final'' disposal, reuse, or recycling location. OOC suggests that it be considered the shore base. In many instances, the ''final'' destination is not known, particularly for trash that is placed in a common bin at the shore base.

Response: No change. The final destination is the place where the lessee or operator transfers the waste to an entity that receives, reuses, recycles, or disposes of the waste.

Comment: OOC notes that the composition and quantities are estimates only and based on typical estimates from similar drilling operations. Also, the destination of the waste is based on pre-planning only and may change during the actual activities conducted under the DPP or DOCD.

Response: MMS agrees that these are estimates.

Section 250.257(e) Vicinity map.

Comment: OOC requests adding the word ''primary'' before ''routes.'' In many cases, an alternate route may be taken depending on environmental conditions, visiting multiple platforms, etc.

Response: MMS made the recommended change.

Section 250.258(a) General.

Comment: OOC requests that pipeline terminals be eliminated from the example since they typically do not provide supply and service support.

Response: MMS made the recommended change. Pipeline terminals are addressed under § 250.256(b)(5).

Section 250.258(b) Air emissions.

Comment: OOC recommends that DOCDs in areas westward of 87°30′ W. longitude in the GOM be specifically excluded from this requirement.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.258(c) Unusual solid and liquid wastes.

Comment: OOC recommends that DOCDs in the GOM be specifically excluded from this requirement.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.258(d) Waste disposal.

Comment: For clarity and completeness, OOC suggests that this requirement be included with § 250.224(d). Much of this information appears to be duplicative of that required in § 250.224(d).

Response: No change. The rule is organized in a manner that addresses wastes based on source. There is no one section that includes all waste information requirements. MMS assumed that OOC meant to refer back to § 250.248(a), not § 250.224(d), which relates to EPs.

Section 250.261(a) General requirements.

Comment: OOC requests an explanation of how the requirements listed in § 227(b) (sic) assist the Regional Supervisor in complying with NEPA and other relevant Federal laws.

Response: No change. The Environmental Impact Analysis (EIA) assists MMS in each DPP and DOCD submittal to determine, based on the project-specific impact analysis provided by the lessee or operator for his project, if there is an exception to the DOI listing of categorical exclusions. The lessee or operator is in the best position to determine the environmental effects of his proposed activities based on whether they are routine or non-routine. The lessee or operator must be able to evaluate the nature and extent of any environmental implications of his proposed development and production activities.

Section 250.261(b) Resources, conditions, and activities.

Comment: For (4), OOC requests a definition of ''critical habitat.''

Response: The definition is the same as that found in the Endangered Species Act.

Comment: For (7), OOC recommends that the GOM be specifically excluded from this requirement.

Response: No change to the rule. The rule applies to all Regions and the commenter is requesting this change only in the GOMR. The accompanying NTL does make the change requested with respect to the GOMR.

Section 250.261(c) Environmental impacts.

Comment: For (1), OOC recommends that the reference to cooling water intake structures be removed since EPA has not issued final regulations for these structures.

Response: No change. See response to § 250.217(e).

Comment: For (5), OOC recommends that this requirement be eliminated. They see no value in describing alternatives that they considered and eliminated.

Response: No change. Reviewing this information is valuable in completing the NEPA process.

Section 250.266(a) Determine whether deemed submitted.

Comment: OOC asks the basis for increasing the timeframe from 20 days to 25 days. They request that plans be deemed submitted within 20 days.

Response: No change. The additional working days are necessary because of increased review time as described in the preamble to the proposed rule (67 FR 35373).

Comment: For (1), OOC requests an explanation of the term ''sufficiently accurate.''

Response: Sufficiently accurate means in a manner that is enough to meet the needs of a situation or proposed end.

Comment: OOC requests that, when the plan has been ''deemed submitted'', the contact person be notified by fax, letter, or e-mail.

Response: MMS made the recommended change. MMS will notify lessee or operator when the DPP or DOCD is deemed submitted.

Section 250.266(b) Identify problems and deficiencies.

Comment: OOC asks when and how the Regional Supervisor will notify you that your plan has a deficiency. OOC suggests that the notification occur within the timeframe established in § 250.231(a) [sic]. They request that the notification be made to the contact person by fax, letter, or e-mail.

Response: MMS made the recommended change to provide a time frame for response. The method of notification will continue to be by phone, fax, letter, or e-mail.

Section 250.267(a) State, local government, CZMA consistency, and other reviews.

Comment: OOC recommends that the timeframe be changed to 2 days to match the EP. There should be no differences in sending an EP or DPP or DOCD.

Response: MMS made the recommended change.

Comment: OOC recommends that in lieu of ''receipted'' mail, the public information copy be sent by ''overnight'' mail. They believe that the cost differential between receipted mail and overnight mail is not significant. If MMS believes the cost is prohibitive, then MMS may request the lessee or operator to provide a completed air bill at the lessee or operators' expense. Sending the public information copy by overnight mail will significantly speed up the CZMA process. Alternatively, if the operator provides a complete public information copy in an electronic format, it could be e-mailed.

Response: MMS made changes to allow alternative methods.

Section 250.267(b) General public.

Comment: OOC recommends that the timeframe be modified to 2 working days.

Response: MMS made the recommended change.

Section 250.267(d) Amendments.

As a result of its internal review of the proposed regulation, MMS added a sentence to clarify that some major amendments proposed by the operator may require a deemed submitted review.

Section 250.268(a) Governor.

Comment: OOC requests that MMS consider establishing a timeframe in which the Regional Supervisor must explain in writing to the Governor the reasons for rejecting any of his or her recommendations.

Response: No change. The explanation to the Governor of any affected State has no effect on the DPP or DOCD approval process and therefore is not time-critical.

Section 250.272(a) Amend or resubmit your DPP or DOCD.

Comment: OOC notes that if MMS has approved the DPP or DOCD, then the plan would need to be revised, not amended.

Response: No change. A revision applies to an approved plan. At this stage, there is no approved DPP or DOCD to revise.

Section 250.272(b) Appeal.

Comment: For (2), OOC notes that if MMS has approved the DPP or DOCD, then the plan would need to be revised, not amended.

Response: No change. A revision applies to an approved OCS plan. At this stage, there is no approved DPP or DOCD to revise.

Section 250.280(a) Compliance.

Comment: OOC asks what constitutes a failure to comply. The plans are very detailed and in many cases the very specific information that is requested (such as waste disposal sites, details of discharges, etc.) may not be known in detail at the time the plan is submitted. Also, the information may change from time to time during the life of the proposed action.

Response: No change. ''Failed to comply'' means that a lessee or operator is conducting operations under a plan, but one or more of the changed conditions listed in § 250.283(a) has/have occurred and the lessee or operator has not revised the plan. The term also applies when the lessee or operator has not adhered to specified plan approval conditions.

Section 250.282 Do I have to conduct post-approval monitoring.

Comment: Ms. Peeler states that the rule does not require monitoring.

Response: No change. Contrary to the commenter's interpretation of the regulations, Section 250.282 requires monitoring.

Comment: Ms. Peeler requests that MMS require cumulative environmental reports on each permitted activity.

Response: No change. MMS ensures through various reports that permitted activities were conducted as approved in the plan.

Comment: OOC recommends that if monitoring is required, it should be stated in the approval letter.

Response: No change. If monitoring is required that is not otherwise required by regulation or lease stipulation, it will be in the approval letter.

Comment: OOC asks about what kind of monitoring could be required.

Response: No change. The type of monitoring will be determined case-by-case based on the need to determine the effectiveness of mitigation, but not to conduct environmental studies.

Comment: OOC asks how long the data has to be retained.

Response: Retention time will be specified in the approval letter.

Comment: OOC asks what information will be held confidential.

Response: No change. MMS will hold confidential any information that meets the criteria of 43 CFR 2.13(c) and the Freedom of Information Act (FOIA).

Section 250.282(b) Monitoring reports.

Comment: OOC notes that the current regulation requires only that the data be submitted. To require the operator to analyze the information and submit the analysis to MMS goes well beyond the current regulation.

Response: No change. MMS agrees that this paragraph may require information beyond that of the current regulations. The proposed rule allowed for the opportunity to comment on this increase. OOC did not recommend any specific changes to the proposed language.

Section 250.283(a) Revised OCS plans.

Comment: For (1), OOC asks what changing the type of production facility means.

Response: The rule now contains examples to provide clarification regarding what is meant by type of drilling rig and production facility.

Comment: For (3), OOC asks what changing the type of production means. How much does the production rate or storage capacity have to increase before it is considered significant?

Response: No change. The type of production refers to oil, gas, salt, and sulphur. The thresholds will be specified in an NTL.

Comment: For (4), OOC recommends a change to ''exceeds the exemption limit.''

Response: No change. The information is necessary to ensure compliance with the Clean Air Act (CAA) requirements.

Comment: For (5), OOC asks how much the wastes have to change to be significant.

Response: No change. The thresholds will be specified in an NTL.

Comment: For (7), OOC recommends that this requirement be limited to using an onshore support base in another State.

Response: MMS made the recommended change. MMS deleted ''change the onshore support base you are using'' and provided clarification.

Comment: OOC states that (8) is overly broad.

Response: No change. Regulations must be flexible enough to address evolving issues and concerns related to compliance with NEPA, CZMA, and other relevant laws.

Section 250.284(b) Significant changes in information or conditions.

Comment: OOC states that this requirement is overly broad.

Response: No change. MMS cannot anticipate, with complete certainty, the factors that would require a revision, and therefore must retain a certain degree of flexibility.

Section 250.288 When must I submit a DWOP.

Comment: OOC notes that in many cases subsea production technology has become ''standard,'' and questions the value of providing a full DWOP for all subsea wells at all water depths.

Response: No change. MMS still requires this information because there are too many variables, *e.g.*, water depth, pore pressures, and reservoir characteristics, for MMS to not review each individual subsea technology proposed.

Comment: OOC asks for clarification of the term ''any activity'' in proposed § 250.288. In many cases, pre-engineering and fabrication may be initiated before the final project concept being selected. For example, fabrication of a subsea tree may be initiated before the well being drilled in anticipation that the well will be successful.

Response: MMS made clarifications regarding when each part of a DWOP must be submitted. The final rule also clarifies which operations may not be undertaken before the respective parts are approved. MMS deleted the word ''activities'' and added a sentence in the rule at § 250.290 that states ''You may not complete any production well or install the subsea wellhead and well safety control system (often called the tree) before MMS has approved the Conceptual Plan.''

Comment: OOC recommends that this requirement should be that production is not initiated before the approval of a Deep Water Operations Plan (DWOP).

Response: MMS has clarified the requirement that the DWOP be approved by MMS before you begin production. However, MMS is not suggesting that approval routinely will wait until just before the operator/lessee begins production. The DWOP is designed to address industry and MMS concerns by allowing a lessee or operator to know, well in advance of significant spending, that its proposed methods of dealing with situations not specifically addressed in the regulations are acceptable to MMS. This goal might not be accomplished if the lessee or operator makes major expenditures, such as installation of equipment on the seafloor, before the MMS approves the DWOP.

Comment: OOC notes that the regulations do not address requirements for revising, updating, or amending a previously submitted and approved DWOP. This was specifically addressed within NTL No. 2000–N06, and OOC recommends that it similarly be addressed within this rulemaking.

Response: MMS agrees and such provisions are now included in § 250.295.

Section 250.289 Why do I need to submit a DWOP.

MMS deleted ''floating'' and ''systems or subsea equipment'' and modified the wording for further clarification, and to conform to changes made as a result of OOC's comment on proposed § 250.288. See § 250.286.

Section 250.290 What are the three parts of a DWOP.

Comment: OOC comments under paragraph (a) ''Conceptual'' that it is unrealistic to expect operators to prepare a DWOP before selecting the development concept for the project. In many cases, preliminary engineering design will begin on one or more concepts before the operator actually selects the development concept for the project.

Response: MMS made the recommended change. MMS needs only a general discussion or description at this point, and understands that more detailed engineering analysis may be conducted at a later date.

Comment: Florida recommends under paragraph (b) ''Preliminary'' that preliminary DWOPs be sent for CZMA consistency review.

Response: No change. There are no reasonably foreseeable impacts to the coastal zone or resources from a DWOP. Nor does a DWOP constitute a license or permit. The impacts and activities would be described in a DPP or DOCD, which are subject to CZMA consistency review.

Comment: OOC comments under paragraph (b) ''Preliminary'' that the system design may not be completed before starting the procurement and fabrication of system elements due to project schedules requiring the procurement and fabrication of some long lead items. Also, the Regional Supervisor should have the ability to waive the requirement for a Preliminary DWOP in any water depth that is similar to projects previously approved or where designs have become ''standard'' or where regulations for a particular component have been adopted and alternative compliance is not needed.

Response: MMS agrees. However, MMS still needs to review major safety components before purchase and installation. MMS deleted ''you may submit the Preliminary Part in several sections to suit the project schedule.''

MMS made the recommended change. For previously approved subsea systems, the conceptual review and approval time periods may be combined with the DWOP.

MMS made the recommended change. See response below for deletion of final part.

Comment: Under paragraph (c) ''Final,'' OOC comments that submittal within 90 days of first production may be unrealistic. In many cases a well or wells may be brought on line to provide gas for the facility, etc. that may not represent the operating conditions when the facility is fully operating.

Response: MMS deleted paragraph (c) ''Final'' to eliminate multiple submittals to both Region and District offices once production had commenced.

Section 250.291 What must the Conceptual Part of a DWOP contain.

Comment: OOC notes that there are no details of what should be included for parts (a), (b) and (c). These details have been provided within NTL No. 2000–N06, and it is recommended that they similarly be placed within the regulation unless MMS intends to retain a NTL providing this level of detail.

Response: Some of the details provided within NTL 2000–N06 were placed in the rule. See § 250.289.

Section 250.296 When and why must I submit a CID.

MMS rewrote the entire section to simplify and clarify the rules, as well as lighten the burden on the operator. MMS revised the title to: ''When and how must I submit a CID?'' MMS now requires you to submit one original and two copies of a CID to the appropriate OCS Region.

Section 250.296(a)(1).

Comment: OOC asks for the meaning of ''activities.'' What is the basis for requiring CIDs for development projects that utilize structures other than conventional platforms in water depths greater than 400 meters, and what does the type of structure foundation have to do with MMS's need to verify the development of economically producible reserves?

Response: We agree that the term ''activities'' was unclear and have deleted it. MMS made changes to the regulations requiring CIDs for all developments in water depths greater than 400 meters (1312 feet), regardless of the type of structure foundation. MMS deleted § 250.296(a)(1); its provisions are now covered under § 250.297(a).

Section 250.296(a)(2).

Comment: OOC requests an explanation of the meaning of ''activities.'' The requirement that a CID be submitted and approved for any project using subsea technology is questioned. There are numerous instances where a subsea well is used to develop marginal reserves in as little as 150 feet of water. If there is only one zone to be produced, then a CID is superfluous and a burden on both the operator and MMS. If zones are to be commingled downhole, then the existing commingling approval process is adequate.

Response: MMS deleted proposed § 250.296(a)(2). MMS will review only those subsea developments located in water depths greater than 400 meters (1,312 feet), see § 250.296(a).

Section 250.296(b).

Comment: OOC notes that in many cases, fabrication of a structure will begin as soon as a discovery has been made and a development concept selected. This may be long before the information for a CID is available to submit. To wait until the CID has been approved before proceeding with the project will lead to unreasonable cycle times and adversely affect project economics.

Response: We agree with your comment. Fabrication of a structure is unrelated to CIDs. Therefore, operators may begin fabrication of a structure before CID approval. The CID is intended to ensure that all economically producible reservoirs penetrated by existing wells are developed. CIDs are submitted when an Initial or Supplemental DOCD or DPP is submitted. The DOCD/DPP approval will no longer be contingent on CID approval. However, production cannot commence until the operator receives CID approval.

Section 250.297 What information must a CID contain.

Comment: OOC notes that in many cases, the development plan will include continued exploration in the area by the drilling of wells for reservoirs that have not been previously penetrated. How does this affect the CID process?

Response: MMS addressed OOC's remaining concerns in revised § 250.297. Reservoirs that have not been penetrated by a well do not affect the CID process. CIDs are intended to ensure that all economically producible reservoirs penetrated by existing wells are developed.

Section 250.298 How do I submit a CID.

Comment: OOC comments that this provision suggests that a CID submission is a one-time only occurrence and should be made after a field has been discovered and delineated sufficiently for the operator to select a development concept and sanction the project. Therefore, only limited wells may have been drilled and limited data obtained. They note that there is no requirement to update CID filings after further drilling has occurred, and they believe this is appropriate. However, this has not been MMS's practice. In several cases operators have filed CIDs immediately following discovery and concept selection and have been required to file subsequent plans based on continued exploratory and development drilling. If MMS expects filings before significant capital expenditures, then filing the CID with limited information should be acceptable.

Response: MMS deleted the entire proposed section. This concern is covered in revised §§ 250.296(a) and (b) and 250.297. CIDs are to be submitted when an Initial or Supplemental DOCD or a DPP is submitted. Revisions to the CID must be submitted when a decision is made not to develop a reservoir whose development was contemplated in the original CID. The CID process is not intended to be an ''evergreen process.'' Therefore, the existing exploratory and appraisal wells must be addressed in the CID. However, it is incumbent upon the operator to notify MMS of any wells that are drilled after the submittal of the CID and before the operator receives the final CID approval. MMS reserves the right to request additional data from wells reaching total depth during the evaluation period and we may suspend the 150-calendar-day time period.

Section 250.299 What decisions will MMS make on the CID.

Comment: OOC recommends that disapproval should be limited to cases where the reservoirs already discovered are not adequately developed. If the CID or a portion of the CID is disapproved, MMS should present detailed support for its decision including economic justification that includes risk assessment consistent with the operators' established policies. OOC notes that there is no timeframe proposed for MMS to provide its written decision. Since timeframes have been established for decisions on EPs, DPPs, DOCDs, and all three phases of DWOPs, OOC believes this to be a serious oversight on the part of MMS. Since MMS's intent is to provide a written decision before the expenditure of significant capital, OOC believes MMS should provide its written decision within 90 calendar days of submittal. This is similar to the approval timeframe for the Preliminary DWOP, which is also intended to be approved before the significant expenditure of capital. Failure to establish a review/

approval timeframe has significantly affected project schedules. Permit applicants attempting to adhere to MMS's intent of approval receipt before significant capital expenditure will be unable to establish project timelines with undefined CID approval times. Further, they believe that in many cases MMS could expedite the approval of the CID to a four-week turn-around time if the operator meets with MMS with an oral presentation of the development plan and schedules a follow-up meeting to answer any questions that MMS has following its review.

Response: MMS revised this section to provide a decision on the CID within 150 calendar days of receiving it; see § 250.298. The revised section clarifies that MMS may suspend the 150-calendar-day evaluation period if there is missing, inconclusive, or inaccurate data. The regulations further clarify that the evaluation period will be suspended when the operator receives written notification from MMS describing the additional information needed. The evaluation period will resume once MMS receives the requested information.

A 150-calendar-day time period is more realistic than the 90-day period proposed by OOC in that, upon receipt, the CID is placed in queue behind projects that have already been submitted. MMS believes this to be the most equitable approach for all operators. Although an oral presentation may assist in expediting the process due to an exchange of information, an independent evaluation by MMS is necessary. The 150-calendar-day time period will allow MMS to adequately address issues related to project complexity.

Discussion and Analysis of Comments to Draft NTL for the GOM OCS Region

Comments received for the Gulf of Mexico OCS Region's NTL and MMS responses follow:

Proposed Activities (§ 250.211 and § 250.241)

(a) *OCS Plan Information form.*

Comment: OOC states ''provisions should be made to give an anchor radius in lieu of the anchor locations.''

Response: The OCS Plan Information Form, MMS–137, allows for providing anchor radius if specific anchor locations are not known.

(b) *Location.*

Comment: OOC requests consistency between APDs and the OCS Plan Information Form, MMS–137.

Response: MMS is considering revising the APD form in the near future.

Comment: OOC requests showing anchor touchdown points.

Response: This information has been added to the OCS Plan Information Form.

Comment: OOC questions the need for a map.

Response: No change. The location map provides visual enhancement and is required for State CZMA consistency review.

(c) *Storage tanks and production vessels.*

Triggers in the proposed NTL have been deleted to ensure proper NEPA compliance. MMS needs a complete description of the impact producing factors (IPF) associated with the project and Environmental Impact Analysis (EIA) for each EP and DOCD.

Comment: OOC recommends a threshold of 25 barrels.

Response: MMS concurs with this threshold because it represents a typical tote tank volume in the western Gulf of Mexico.

General Information (§ 250.213 and § 250.243)

(b) Drilling fluids

Comment: Florida requests chemical constituents of drilling fluids.

Response: MMS agreed to Florida's request and added the provision to require this information.

Comment: OOC requests that drill cuttings and disposal information be omitted.

Response: Language regarding cuttings and disposal information has been deleted to be consistent with the rule.

Comment: OOC requests deleting loading method.

Response: MMS concurs and also deleted offloading method.

(d) *Oils characteristics.*

Comment: OOC points out that this data may not be available if well tests have not been performed.

Response: The only time this information is required is for activities in the Eastern Planning Area, activities near the Flower Gardens Banks National Marine Sanctuary, and for new deepwater surface facilities. It is unlikely that new construction for facilities in these areas would proceed without the lessee or operator first conducting well tests or other evaluations.

Geological and Geophysical Information (§§ 250.214 and 250.244)

(a) *Geological description.*

Comment: OOC notes that the GOMR requests the depth of geopressure; however, it is not in the rule or the NTL.

Response: MMS will no longer request geopressure depth.

(b) *Structure contour maps.*

Comment: OOC recommends that approval to use an alternate scale not be necessary.

Response: MMS must require a standardized scale. Otherwise, there would be variances in data submitted that could cause unnecessary delays in plan approval.

(e) *Shallow hazards report.*

Comment: OOC requests blanket approval for side scan sonar and magnetometer waivers in deepwater.

Response: MMS does not currently grant blanket waivers, but NTL No. 98–20 is currently under revision, and this will be considered.

(i) *Time vs. depth tables.*

Comment: OOC requests definition of ''no well control'' or provision to request this data on a case-by-case basis.

Response: ''No well control'' means there is no well data on the seismic line.

Hydrogen Sulfide (H_2S) Information (§ 250.215 and § 250.245)

(d) *Modeling report.*

Comment: OOC comments that the modeling report requirement differs from the rule.

Response: No change. This provision is based on requirements in § 250.490 and is consistent with the rule.

Biological, Physical, and Socioeconomic Information (§ 250.216 and § 250.247)

MMS has deleted the provision (paragraph (h)) to require a physical oceanographic statement for each plan. MMS gathers sufficient physical oceanographic data via its studies program, and these data are collected using established protocol. However, MMS may require physical oceanographic data on a case-by-case basis.

(b) *Topographic features plat.*

Comment: OOC recommends that this section apply to anchor placements near topographic features from any anchored drilling rig or anchor installation vessel.

Response: Change made as recommended.

(c) *Topographic features statement (shunting).*

Comment: OOC suggests that this is needed only if you plan to dispose of your drilling fluids and cuttings by shunting.

Response: MMS agrees.

(d) *Pinnacle trend report (Central Gulf of Mexico Planning Area).*

Comment: OOC requests an opportunity to review this NTL.

Response: When appropriate, MMS provides review opportunities for NTLs before issuing them.

(f) *Remotely-operated vehicle (ROV) monitoring survey plan.*

Comment: OOC requests that EP approval letters specifically state that an ROV monitoring survey is required.

Response: Approval letters will state that an ROV monitoring survey is required.

Waste and Discharge Information (250.217 and 250.248)

Comment: OOC states that an application for an individual permit may not have been completed at the time the EP is filed. It points out that the requirement should be to either provide the permit at the time the EP is filed or when it is filed with EPA, whichever is later.

Response: This information is not needed and has been deleted. However, the tables at §§ 250.213(a) and 243(a) have been changed to include an example of the type of individual permits for which MMS requires filing or approval status of the Federal, State, and local application approvals or permits.

(a) *Projected wastes.*

Comment: OOC questions the value of the submittal of this redundant information.

Response: No change. The information is not redundant and is required for NEPA and CZMA compliance.

(c) *Modeling report.*

MMS has changed the language to be consistent with the rule.

Air Emissions Information (250.218 and 250.249)

(a) *Emissions worksheets and screening questions.*

Comment: OOC asks if the Complex ID number is the basis for calculating complex total emissions.

Response: No, the Complex ID number is not part of the consideration when determining whether facilities are co-located, which is the basis for determining complex emissions.

Comment: OOC asks not to submit two sets of emissions data if Complex and Plan emissions are the same.

Response: The NTL has been revised to clarify that only one set is required in this case.

Comment: OOC states that for an EP, the use of the term ''Complex Total Emissions'' can lead to questions regarding aggregation. OOC refers to an EPA rule that was delayed over a similar question.

Response: MMS clearly defined Complex Total Emissions to avoid confusion.

Comment: In the first DOCD screening question, OOC wants 100% of the calculated amount in lieu of 90% to trigger a ''yes'' answer.

Response: No change. The 10% margin of error allows room for mistakes that may put emissions over the exemption level.

(b)(1) *Summary information.*

Comment: OOC questions the need for summary information if the answer is ''No'' to all the questions.

Response: No change. Answers to the screening questions are needed for the GOMR to determine if the spreadsheets need to be submitted for our review for accuracy. They are not designed to preclude the submission of the summarized information.

(b)(2) *Contact(s).*

Comment: OOC questions the need for the contact name for the spreadsheets.

Response: No change. Supplying the contact will expedite GOMR review.

(b)(3) *Exception.*

Comment: OOC requests the definition of the circumstances under which the entire set of worksheets would be required regardless of response to screening questions.

Response: No change. Screening and summary data are reviewed by the GOMR. If errors are detected or suspected in the summary or answers to screening questions, complete spreadsheets would likely be required. If the information is needed to address emissions or air quality impacts as part of an environmental assessment prepared under the NEPA, spreadsheets or other air quality information may be required. In addition, air quality information can be required if it is determined necessary under § 250.303(j).

(c)(3)(renumbered (d)(1)) *Emission reduction measures.*

Comment: OOC questions limiting the use of fuel certification to only existing co-located facilities.

Response: MMS does not want to limit the use and has deleted this provision.

Comment: OOC questions if providing the amount of reduction is meaningful since this is a theoretical calculated number.

Response: Without stack tests, all values are theoretical and calculated, so the amount of reduction is as valid as the other estimated values.

(c)(4)(renumbered (d)(2)) *Verification of nondefault emission factors.*

Comment: OOC asks if it is necessary to provide information on an actual factor if it is greater than the default value.

Response: Since the actual value is more accurate than the average (default) value, no verification of the actual value is required.

Oil Spills Information (250.219 and 250.250)

(a)(2)(i) *Regional OSRP information.*

Comment: OOC asks why lessees and operators must repeat this information since it is already in the OSRP.

Response: This requirement has been changed to eliminate the list of companies covered.

(a)(2)(iv) *Worst-case scenario determination.*

Comment: OOC questions the need for a worst-case discharge scenario comparison and suggests that simply making the statements should suffice.

Response: No change. This information is necessary for NEPA and CZMA purposes and for MMS to determine if an OCS plan complies with OPA 90.

(c) *Modeling report.*

Comment: OOC requests the opportunity to comment on the referenced NTL.

Response: The reference to an NTL has been deleted. No NTL will be issued.

Related Facilities and Operations Information (250.256)

(a) *Related OCS facilities and operations.*

Comment: OOC comments that lessees and operators may not have information on related facilities and final product destination or transportation at the time of filing.

Response: If all the information is not available at the time the plan is filed, lessees and operators must provide the best available information.

(b) *Transportation system.*

Comment: OOC comments that lessees and operators may not have information on related facilities and final product destination or transportation at the time of filing.

Response: If all the information is not available at the time the plan is filed, lessees and operators must provide the best available information. MMS revised § 250.256 to reflect this.

(c) Produced liquid hydrocarbons transportation vessels.

Comment: OOC asks for clarification on the average volume to be loaded.

Response: A change to the table was made to provide such clarification.

Support Vessel and Aircraft Information (250.224 and 250.257)

(a) *General.*

Comment: OOC asks if information regarding the class of support vessels can be furnished if information on the specific vessel is not known.

Response: Yes. A change was made to accommodate such occurrences. Also,

triggers for this table have been deleted since the information is needed by the GOMR for proper NEPA compliance and provides a complete description of the impact-producing factors associated with the project and EIA.

(b) *Diesel oil supply vessels.*

Comment: OOC comments that diesel oils for fuel and non-fuel uses are not supplied differently.

Response: No change. The table does not require such a distinction. If you know that a particular vessel will transfer diesel oil only for purposes other than fuel usage, make sure that vessel is included in the table.

(d) *Solid and liquid wastes transportation.*

Comment: OOC asks whether this information needs to be submitted for all waste streams or only for those affected by the new technology.

Response: Provide complete information for all waste streams.

Onshore Support Facilities Information (250.225 and 250.258)

(b) *Support base construction or expansion.*

Comment: OOC questions what constitutes a ''major'' addition.

Response: If the proposed activities will directly result in a base expansion, provide the required information. MMS revised the NTL to make this clarification.

(d) *Waste disposal.*

Comment: OOC states that the disposal site may not be known or it may change from time to time.

Response: Provide the best available information.

Comment: OOC questions if waste being disposed of in Louisiana makes it an affected State.

Response: No, unless the waste disposal site is in Louisiana's coastal zone.

Comment: OOC asks if the disposal site must be in the coastal zone to make the State of Louisiana an affected State.

Response: Yes.

Coastal Zone Management Act (CZMA) Information (250.226 and 250.260)

(b) *Other information.*

Comment: OOC requests the correct regulatory citation.

Response: No change. The correct citation is already provided.

Environmental Impact Analysis (EIA) (250.227 and 250.261)

MMS has replaced the proposed EIA Matrix with an improved approach, based on the requirements in the proposed rule and in consideration of all comments received, including those received at the subpart B workshop.

Comment: OOC recommends excluding the EIA in revised and supplemental plans.

Response: The EIA will only be required for revised plans if the impacts are different from those of the original EIA. The EIA is required for all supplemental plans because the additional activities will likely produce additional impacts.

(c) *Impact analysis.*

Comment: OOC questions what happens if MMS disagrees with the operators Impact Producing Factor (IPF) identification.

Response: MMS will conduct an independent IPF identification to comply with NEPA. Lessee or operator input can provide invaluable assistance to MMS in this process. If a particularly important or unusual IPF, resource, or impact is not addressed or is not correct, the MMS may require the lessee or operator to provide the proper information. MMS revised the NTL to make this clarification.

(d) (renumbered(e)) *Alternatives.*

Comment: OOC comments that this should be eliminated.

Response: No change. For DOCDs, alternatives are an integral part of the NEPA process that allows an agency to determine that the best alternative is ultimately approved.

(g) (renumbered (i)) *References.*

Comment: OOC states that it is impossible to not tier off existing EISs, or EAs, or other NEPA documents.

Response: In the EIA, a lessee or operator may summarize and incorporate documents by reference if they contain information that is related to the proposed activities.

Administrative Information (250.228 and 250.262)

(a) *Exempted information description (public information copies only).*

Comment: OOC asks, ''Why is this needed and what will it be used for?'

Response: This information is required so that all reviewers and the MMS decision maker sufficiently understand the proposed action and any accompanying information.

(b) *Bibliography.*

Comment: OOC questions the requirement that all plans be listed.

Response: No change. The MMS Internet website contains a listing of previously submitted plans, but only the plan submitter can know which of the plans on the list are referenced in the plan.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This rule is not a significant rule under Executive Order 12866. The Office of Management and Budget (OMB) has determined that it is not a significant rule and will not review the rule.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The major purpose for the rule is the restructuring of the existing rule and clarifying the regulatory language. The restructuring and plain-language revisions will not result in any economic effects to small or large entities. Some of the technical revisions will have a minor economic effect on lessees and operators with respect to the paperwork requirements. Although we estimate a total annual paperwork burden of 267,880 hours for all entities; this includes an actual increase of only 7,510 hours. Using a standard hourly cost of $50 to determine the paperwork burden, the increase would be $375,500. Based on 130 lessees/operators, the average increase is approximately $2,900 per entity from the current regulations. These costs will not cause an annual effect on the economy of $100 million or more.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not affect how lessees or operators interact with other agencies. Nor does this rule affect how MMS will interact with other agencies.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule only addresses the requirements and processes for submitting various plans and documents for MMS review and approval before a lessee or operator may explore, develop, or produce oil and gas in the OCS.

(4) This rule does not raise novel legal or policy issues. The rule involves a new policy—that of requiring a written notice to MMS before a lessee or operator begins certain ancillary activities, but the new policy decision is not ''novel.'' Under our existing regulations at 30 CFR part 251, MMS requires an application for a permit or the filing of a notice before allowing certain types of off-lease G&G activities. The new requirement in the rule would

enable MMS to better ensure safe use and environmental protection of the OCS and be aware of significant sets of valuable data that could and should be incorporated into MMS analyses and MMS-funded studies.

Regulatory Flexibility Act (RFA)

The DOI certifies that this rule does not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This rule applies to all lessees and operators that conduct activities on the OCS. Small lessees and operators that conduct activities under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System Codes 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. Under these codes, SBA considers all companies with fewer than 500 employees to be a small business. MMS estimates that of the 130 lessees and operators that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent).

The primary economic effect of the revised subpart B on small businesses is the cost associated with information collection activities. The rule is a plain-language rewrite of 30 CFR part 250, subpart B, and contains virtually the same reporting and recordkeeping requirements and attendant costs as the current regulations. The changes in reporting requirements do not significantly increase the information collection burden on respondents—large or small. MMS estimates an annual increase of 7,510 hours in the paperwork burden from that imposed by the current regulations. Using a standard hourly cost of $50, this represents a cost burden increase of $375,500. The following is a breakdown of the paperwork cost burden associated with the new or expanded requirements:

- Respondents may be required to submit a report that summarizes and analyzes information obtained or derived from ancillary activities. MMS estimates the burden would only be to provide MMS copies of the company documentation and report and would be 1 hour or $50 per report. MMS estimates 20 reports annually, for a cost burden increase of $1,000.
- MMS estimates the overall average burden of preparing and submitting an OCS plan (EP, DPP, or DOCD) to increase by approximately 20 hours or $1,000 per plan. MMS estimates 260 EPs and 100 DPPs or DOCDs, for a total of 360 plans or an annual cost burden increase of $360,000.
- Respondents may be required to submit monitoring plans for approval before beginning work. MMS estimates plan submission to take 1 hour or $50 per plan. MMS estimates 30 plans annually, for a cost burden increase of $1,500.
- Respondents may be required to retain copies of all monitoring data obtained or derived from monitoring programs. The burden would only be to make the information available to MMS. MMS estimated a burden of 2 hours or $100 annually per respondent and the number of respondents to be 130. The estimated annual cost burden increase would be $13,000.

Adding the increased paperwork cost burden amounts, we have a total of $375,500. ($1,000 + $360,000 + $1,500 + $13,000 = $375,500.) Thus, based on 130 lessees/operators, the average increase is $2,900, for both large and small entities.

As discussed above, MMS does not believe that this rule will have a significant impact on the lessees or operators who explore for and produce oil and gas on the OCS, including those that are classified as small businesses.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–REG–FAIR (1–888–734–3247). You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA, (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more. As described above, MMS estimates an annual increase of $2,900 per respondent. These costs will not cause an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The minor increase in cost will not change the way the oil and gas industry conducts business, nor will it affect regional oil and gas prices; therefore, it will not cause major cost increases for consumers, the oil and gas industry, or any Government agencies.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. All lessees and operators, regardless of nationality, must comply with the requirements of this rule. The rule will not affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act (PRA) of 1995

This rule contains a collection of information that was submitted to OMB for review and approval under Section 3507(d) of the PRA. OMB approved the collection of information for this rule under the title ''30 CFR part 250, Subpart B—Plans and Information'' (OMB control number 1010–0151). When the rule becomes effective, this collection will supersede the collection for current subpart B requirements under OMB control number 1010–0049. The PRA provides that 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 number. Respondents include approximately 130 Federal OCS oil and gas or sulphur lessees and operators. The frequency of response is on occasion. Responses to this collection of information are mandatory. MMS will protect proprietary information according to the FOIA and 30 CFR 250.196, ''Data and information to be made available to the public.''

MMS analyzes and evaluates the information submitted under subpart B to ensure that planned operations are safe; will not adversely affect the marine, coastal, or human environment and will conserve the resources of the OCS.

The information collection requirements in these final subpart B regulations remain unchanged from the proposed rule, and represent only a few changes from the subpart B regulations currently in effect that this rule will supersede. The following details those changes.

Section 250.208—Ancillary Activities Notice. Before beginning certain ''ancillary'' activities, respondents must notify MMS. Currently respondents notify MMS of certain types of ''preliminary'' activities. The rule revises the procedures to include notifying MMS of ''ancillary activities'' both before and after submitting a plan. The rule also incorporates current NTL

procedures that may require respondents to notify other users of the OCS before conducting ancillary activities. However, the burden for these notifications was included under the subpart B information collection approval for regulations currently in place. Therefore, the new regulations will not impose any additional burden (no change).

Section 250.210(a)—Ancillary Activities Report. Respondents may be required to submit a report that summarizes and analyzes information obtained or derived from ancillary activities. Although this is a new reporting requirement, lessees and operators conducting ancillary activities prepare their own internal reports to document the results of these activities in the normal course of doing business. MMS estimates that the only burden would be to provide MMS copies of the company documentation and report (1 hour per report over current estimated burden hours).

Section 250.210(b)—Ancillary Activities Recordkeeping. The rule incorporates records retention specified in current NTLs for all survey and study information, and for data obtained or derived from ancillary activities (preliminary activities), including information from previous leaseholders or unit operators. The burden for this recordkeeping activity was approved under the subpart B information collection approval for the regulations currently in effect. Therefore, the new regulations will not impose any additional burden (no change).

Sections 250.211 through 250.228 and §§ 250.241 through 250.262—Contents of EPs, DPPs, or DOCDs.

The average paperwork burden for submitting a plan includes furnishing all of the information required in the plan, as well as the supporting detail (*i.e.*, surveys, reports, studies, conservation information, forms used in the GOMR, etc.). The final rule simply incorporates much of the information now detailed in NTLs, and imposes few new changes to the information currently submitted in the plans and accompanying information. The rule will have minimal impact on the overall average burden of submitting a plan (additional 20 hours per plan).

Section 250.282—Monitoring Recordkeeping.

Respondents may be required to retain copies of all monitoring data obtained or derived from monitoring programs. As with recordkeeping for ancillary activities, respondents would retain this information in the normal course of business. The only burden would be to make the information available to MMS, if requested (2 hours annually per respondent).

Section 250.282(a)—Monitoring Plans. Respondents may be required to submit monitoring plans for approval before beginning work (1 hour per plan).

Section 250.286 through § 250.299—DWOPs and CIDs. These requirements are now detailed in NTLs and the rule simply incorporates them into the regulations. The burden for submitting the information was approved under the subpart B 30 CFR 250 §§ 286–299 information collection approval for regulations currently in effect. Therefore, the new regulations will not impose an additional burden (no change).

OMB approved a total of 267,880 hours for this collection; the chart below details the information collection requirements for the rulemaking.

BURDEN BREAKDOWN

Citation 30 CFR 250 subpart B	Reporting & recordkeeping requirement	Hour burden per requirement	Average annual number	Annual burden hours
200 through 206	General requirements for plans and information	Burden included with specific requirements below.		0
208	Notify MMS and other users of the OCS before conducting ancillary activities.	10	20 notices	200
210(a) [New]	Submit report summarizing and analyzing data/information obtained or derived from ancillary activities.	1	20 reports	20
210(b)	Retain ancillary activities data/information	2	130 recordkeepers	260
211 through 228 [Expanded].	Submit EP and accompanying information (including forms MMS–137, MMS–138, MMS–142 used in GOMR) and provide notifications.	600	260 plans	156,000
232(d); 234; 235(a); 281(d)(3); 283; 284; 285.	Submit amended, modified, revised, or supplemental EP, or resubmit disapproved EP.	80	180 changed plans	14,400
241 through 262 [Expanded].	Submit DPP or DOCD and accompanying information (including forms MMS–137, MMS–139, MMS–142 used in GOMR) and provide notifications.	600	100 plans	60,000
267(d); 272(a); 273, 283; 284; 285.	Submit amended, modified, revised, or supplemental DPP or DOCD, or resubmit disapproved DPP or DOCD.	82	215 changed plans	17,630
269(b)	Submit information on preliminary plans for leases or units in vicinity of proposed development and production activities.	2	10 responses	20
281(a)	Submit various applications and permits	Burden included under appropriate subpart or form (1010–0044; 1010–0059; 1010–0149; 1010–0050).		0
282 [New]	Retain monitoring data/information	2	130 recordkeepers	260
282(a) [New]	Submit monitoring plans	1	30 plans	30
282(b)	Submit monitoring reports and data (including form MMS–141 used in the GOMR).	6	30 reports	180
286 through 295	Submit DWOP	580	17 plans	9,860
296 through 299	Submit CID	300	30 documents	9,000
200 through 299	General departure and alternative compliance requests not specifically covered elsewhere in subpart B regulations.	2	10 requests	20
Total Burden			1,182	267,880

Please submit any comments concerning these burden estimates to MMS at the following:

• E-mail MMS at *rules.comments@mms.gov.* Use 1010–AC47 in the subject line.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Plans and Information—AC47'' in your comments.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have federalism implications. This rule does not substantially and directly affect the relationship between the Federal and State governments. The rule applies to lessees and operators that conduct activities on the OCS. This rule does not impose costs on States or localities. Any costs will be the responsibility of the lessees and operators.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, this rule does not have significant Takings implications. A Takings Implication Assessment is not required. The rule revises existing regulations. It does not prevent any lessee or operator from performing operations on the OCS, provided they follow the regulations. Thus, MMS did not need to prepare a Takings Implication Assessment according to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

We have evaluated the rule in accordance with Executive Order 13211 and have determined that this rule does not have a significant effect on energy supply, distribution, or use because the major purpose for this rule is the restructuring of the rule and clarifying regulatory language. The rule addresses the requirements and processes for submitting various plans and documents for MMS approval before a lessee or operator may explore, develop, or produce oil and gas in the OCS and contains virtually all the same reporting and recordkeeping requirements and attendant costs as the current regulations. There are a few new or expanded areas that have been incorporated. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of Sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement is not required.

Unfunded Mandates Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have any Federal mandates; nor does the rule have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Parts 250 and 282

Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Outer continental shelf, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: August 5, 2005.

Chad Calvert,

Acting Assistant Secretary—Land and Minerals Management.

■ For reasons stated in the preamble, the Minerals Management Service (MMS) amends 30 CFR parts 250 and 282 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 250.102 [Amended]

■ 2. In § 250.102(b), amend the table as follows:

■ a. In paragraph (b)(2), the citation ''250.204'' is revised to read ''250.241 through 250.262''.

■ b. In paragraph (b)(4), the citation ''250.203'' is revised to read ''250.211 through 250.228''.

■ 3. In § 250.105, the following definitions are added alphabetically to read as follows:

§ 250.105 Definitions.

* * * * *

Ancillary activities means those activities on your lease or unit that you:

(1) Conduct to obtain data and information to ensure proper exploration or development of your lease or unit; and

(2) Can conduct without MMS approval of an application or permit.

* * * * *

Development geological and geophysical (G&G) activities means those G&G and related data-gathering activities on your lease or unit that you conduct following discovery of oil, gas, or sulphur in paying quantities to detect or imply the presence of oil, gas, or sulphur in commercial quantities.

* * * * *

Geological and geophysical (G&G) explorations means those G&G surveys on your lease or unit that use seismic reflection, seismic refraction, magnetic, gravity, gas sniffers, coring, or other systems to detect or imply the presence of oil, gas, or sulphur in commercial quantities.

* * * * *

Prospect means a geologic feature having the potential for mineral deposits.

* * * * *

■ 4. In § 250.199, in paragraph (e), the heading of the first column, and paragraph (e)(2) are revised to read as follows:

§ 250.199 Paperwork Reduction Act statements—information collection.

* * * * *

(e) * * *

30 CFR 250 supbart/title (OMB control number) and related forms	Reasons for collecting information and how used

30 CFR 250 supbart/title (OMB control number) and related forms	Reasons for collecting information and how used
* * * *	* * *
(2) Subpart B, Plans and Information (1010–0151), including the following forms: MMS–137, OCS Plan Information Form. MMS–138, Gulf of Mexico Air Emissions. Calculations for EPs: MMS–139, Gulf of Mexico Air Emissions. Calculations for DOCDs: MMS–141, ROV Survey Report. MMS–142, Environmental Impact Analysis Worksheet.	To inform MMS, States, and the public of planned exploration, development, and production operations on the OCS. To ensure that operations on the OCS are planned to comply with statutory and regulatory requirements, will be safe and protect the human, marine, and coastal environment, and will result in diligent exploration, development, and production of leases.
* * * *	* * *

■ 5. Subpart B is revised to read as follows:

Subpart B—Plans and Information

General Information

Sec.

250.200 Definitions.
250.201 What plans and information must I submit before I conduct any activities on my lease or unit?
250.202 What criteria must the Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD) meet?
250.203 Where can wells be located under an EP, DPP, or DOCD?
250.204 How must I protect the rights of the Federal government?
250.205 Are there special requirements if my well affects an adjacent property?
250.206 How do I submit the EP, DPP, or DOCD?

Ancillary Activities

250.207 What ancillary activities may I conduct?
250.208 If I conduct ancillary activities, what notices must I provide?
250.209 What is the MMS review process for the notice?
250.210 If I conduct ancillary activities, what reporting and data/information retention requirements must I satisfy?

Contents of Exploration Plans (EP)

250.211 What must the EP include?
250.212 What information must accompany the EP?
250.213 What general information must accompany the EP?
250.214 What geological and geophysical (G&G) information must accompany the EP?
250.215 What hydrogen sulfide (H_2S) information must accompany the EP?
250.216 What biological, physical, and socioeconomic information must accompany the EP?
250.217 What solid and liquid wastes and discharges information and cooling water intake information must accompany the EP?
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Subpart B—Plans and Information

General Information

§ 250.200 Definitions.

Acronyms and terms used in this subpart have the following meanings:

(a) *Acronyms* used frequently in this subpart are listed alphabetically below:

CID means Conservation Information Document

CZMA means Coastal Zone Management Act

DOCD means Development Operations Coordination Document

DPP means Development and Production Plan

DWOP means Deepwater Operations Plan

EIA means Environmental Impact Analysis

EP means Exploration Plan

MMS means Minerals Management Service

NPDES means National Pollutant Discharge Elimination System

NTL means Notice to Lessees and Operators

OCS means Outer Continental Shelf

(b) *Terms* used in this subpart are listed alphabetically below:

Amendment means a change you make to an EP, DPP, or DOCD that is pending before MMS for a decision (see §§ 250.232(d) and 250.267(d)).

Modification means a change required by the Regional Supervisor to an EP, DPP, or DOCD (see § 250.233(b)(2) and § 250.270(b)(2)) that is pending before MMS for a decision because the OCS plan is inconsistent with applicable requirements.

New or unusual technology means equipment or procedures that:

(1) Have not been used previously or extensively in an MMS OCS Region;

(2) Have not been used previously under the anticipated operating conditions; or

(3) Have operating characteristics that are outside the performance parameters established by this part.

Non-conventional production or completion technology includes, but is not limited to, floating production systems, tension leg platforms, spars, floating production, storage, and offloading systems, guyed towers, compliant towers, subsea manifolds, and other subsea production components that rely on a remote site or host facility for utility and well control services.

Offshore vehicle means a vehicle that is capable of being driven on ice.

Resubmitted OCS plan means an EP, DPP, or DOCD that contains changes you make to an OCS plan that MMS has disapproved (see §§ 250.234(b), 250.272(a), and 250.273(b)).

Revised OCS plan means an EP, DPP, or DOCD that proposes changes to an approved OCS plan, such as those in the location of a well or platform, type of drilling unit, or location of the onshore support base (see § 250.283(a)).

Supplemental OCS plan means an EP, DPP, or DOCD that proposes the addition to an approved OCS plan of an activity that requires approval of an application or permit (see § 250.283(b)).

§ 250.201 What plans and information must I submit before I conduct any activities on my lease or unit?

(a) *Plans and documents.* Before you conduct the activities on your lease or unit listed in the following table, you must submit, and MMS must approve, the listed plans and documents. Your plans and documents may cover one or more leases or units.

You must submit a(n) . . .	Before you . . .
(1) Exploration Plan (EP)	Conduct any exploration activities on a lease or unit.
(2) Development and Production Plan (DPP)	Conduct any development and production activities on a lease or unit in any OCS area other than the Western Gulf of Mexico.
(3) Operations Coordination Document (DOCD)	Conduct any development and production activities on a lease or unit in the Western GOM.
(4) Deepwater Operations Plan (DWOP)	Conduct post-drilling installation activities in any water depth associated with a development project that will involve the use of a non-conventional production or completion technology.
(5) Conservation Information Document (CID)	Commence production from development projects in water depths greater than 1,312 feet (400 meters).
(6) EP, DPP, or DOCD	Conduct geological or geophysical (G&G) exploration or a development G&G activity (see definitions under § 250.105) on your lease or unit when: (i) It will result in a physical penetration of the seabed greater than 500 feet (152 meters); (ii) It will involve the use of explosives; (iii) The Regional Director determines that it might have a significant adverse effect on the human, marine, or coastal environment; or (iv) The Regional Supervisor, after reviewing a notice under § 250.209, determines that an EP, DPP, or DOCD is necessary.

(b) *Submitting additional information.* On a case-by-case basis, the Regional Supervisor may require you to submit additional information if the Regional Supervisor determines that it is necessary to evaluate your proposed plan or document.

(c) *Limiting information.* The Regional Director may limit the amount of information or analyses that you otherwise must provide in your proposed plan or document under this subpart when:

(1) Sufficient applicable information or analysis is readily available to MMS;

(2) Other coastal or marine resources are not present or affected;

(3) Other factors such as technological advances affect information needs; or

(4) Information is not necessary or required for a State to determine consistency with their CZMA Plan.

(d) *Referencing.* In preparing your proposed plan or document, you may reference information and data discussed in other plans or documents you previously submitted or that are otherwise readily available to MMS.

§ 250.202 What criteria must the Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD) meet?

Your EP, DPP, or DOCD must demonstrate that you have planned and are prepared to conduct the proposed activities in a manner that:

(a) Conforms to the Outer Continental Shelf Lands Act as amended (Act), applicable implementing regulations, lease provisions and stipulations, and other Federal laws;

(b) Is safe;

(c) Conforms to sound conservation practices and protects the rights of the lessor;

(d) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense; and

(e) Does not cause undue or serious harm or damage to the human, marine, or coastal environment.

§ 250.203 Where can wells be located under an EP, DPP, or DOCD?

The Regional Supervisor reviews and approves proposed well location and spacing under an EP, DPP, or DOCD. In deciding whether to approve a proposed well location and spacing, the Regional Supervisor will consider factors including, but not limited to, the following:

(a) Protecting correlative rights;

(b) Protecting Federal royalty interests;

(c) Recovering optimum resources;

(d) Number of wells that can be economically drilled for proper reservoir management;

(e) Location of drilling units and platforms;

(f) Extent and thickness of the reservoir;

(g) Geologic and other reservoir characteristics;

(h) Minimizing environmental risk;

(i) Preventing unreasonable interference with other uses of the OCS; and

(j) Drilling of unnecessary wells.

§ 250.204 How must I protect the rights of the Federal government?

(a) To protect the rights of the Federal government, you must either:

(1) Drill and produce the wells that the Regional Supervisor determines are necessary to protect the Federal government from loss due to production on other leases or units or from adjacent lands under the jurisdiction of other entities (e.g., State and foreign governments); or

(2) Pay a sum that the Regional Supervisor determines as adequate to compensate the Federal government for your failure to drill and produce any well.

(b) Payment under paragraph (a)(2) of this section may constitute production in paying quantities for the purpose of extending the lease term.

(c) You must complete and produce any penetrated hydrocarbon-bearing zone that the Regional Supervisor determines is necessary to conform to sound conservation practices.

§ 250.205 Are there special requirements if my well affects an adjacent property?

For wells that could intersect or drain an adjacent property, the Regional Supervisor may require special measures to protect the rights of the Federal government and objecting lessees or operators of adjacent leases or units.

§ 250.206 How do I submit the EP, DPP, or DOCD?

(a) *Number of copies.* When you submit an EP, DPP, or DOCD to MMS, you must provide:

(1) Four copies that contain all required information (proprietary copies);

(2) Eight copies for public distribution (public information copies) that omit information that you assert is exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the implementing regulations (43 CFR part 2); and

(3) Any additional copies that may be necessary to facilitate review of the EP, DPP, or DOCD by certain affected States and other reviewing entities.

(b) *Electronic submission.* You may submit part or all of your EP, DPP, or DOCD and its accompanying information electronically. If you prefer to submit your EP, DPP, or DOCD electronically, ask the Regional Supervisor for further guidance.

(c) *Withdrawal after submission.* You may withdraw your proposed EP, DPP, or DOCD at any time for any reason. Notify the appropriate MMS OCS Region if you do.

Ancillary Activities

§ 250.207 What ancillary activities may I conduct?

Before or after you submit an EP, DPP, or DOCD to MMS, you may elect, the regulations in this part may require, or the Regional Supervisor may direct you to conduct ancillary activities. Ancillary activities include:

(a) Geological and geophysical (G&G) explorations and development G&G activities;

(b) Geological and high-resolution geophysical, geotechnical, archaeological, biological, physical oceanographic, meteorological, socioeconomic, or other surveys; or

(c) Studies that model potential oil and hazardous substance spills, drilling muds and cuttings discharges, projected air emissions, or potential hydrogen sulfide (H_2S) releases.

§ 250.208 If I conduct ancillary activities, what notices must I provide?

At least 30 calendar days before you conduct any G&G exploration or development G&G activity (see § 250.207(a)), you must notify the Regional Supervisor in writing.

(a) When you prepare the notice, you must:

(1) Sign and date the notice;

(2) Provide the names of the vessel, its operator, and the person(s) in charge; the specific type(s) of operations you will conduct; and the instrumentation/techniques and vessel navigation system you will use;

(3) Provide expected start and completion dates and the location of the activity; and

(4) Describe the potential adverse environmental effects of the proposed activity and any mitigation to eliminate or minimize these effects on the marine, coastal, and human environment.

(b) The Regional Supervisor may require you to:

(1) Give written notice to MMS at least 15 calendar days before you conduct any other ancillary activity (see § 250.207(b) and (c)) in addition to those listed in § 250.207(a); and

(2) Notify other users of the OCS before you conduct any ancillary activity.

§ 250.209 What is the MMS review process for the notice?

The Regional Supervisor will review any notice required under § 250.208(a) and (b)(1) to ensure that your ancillary activity complies with the performance standards listed in § 250.202(a), (b), (d), and (e). The Regional Supervisor may notify you that your ancillary activity does not comply with those standards. In such a case, the Regional Supervisor will require you to submit an EP, DPP, or DOCD and you may not start your ancillary activity until the Regional Supervisor approves the EP, DPP, or DOCD.

§ 250.210 If I conduct ancillary activities, what reporting and data/information retention requirements must I satisfy?

(a) *Reporting.* The Regional Supervisor may require you to prepare and submit reports that summarize and analyze data or information obtained or derived from your ancillary activities. When applicable, MMS will protect and disclose the data and information in these reports in accordance with § 250.196(b).

(b) *Data and information retention.* You must retain copies of all original data and information, including navigation data, obtained or derived from your G&G explorations and development G&G activities (see § 250.207(a)), including any such data and information you obtained from previous leaseholders or unit operators. You must submit such data and information to MMS for inspection and possible retention upon request at any time before lease or unit termination. When applicable, MMS will protect and disclose such submitted data and information in accordance with § 250.196(b).

Contents of Exploration Plans (EP)

§ 250.211 What must the EP include?

Your EP must include the following:

(a) *Description, objectives, and schedule.* A description, discussion of the objectives, and tentative schedule (from start to completion) of the exploration activities that you propose to undertake. Examples of exploration activities include exploration drilling, well test flaring, installing a well protection structure, and temporary well abandonment.

(b) *Location.* A map showing the surface location and water depth of each proposed well and the locations of all associated drilling unit anchors.

(c) *Drilling unit.* A description of the drilling unit and associated equipment you will use to conduct your proposed exploration activities, including a brief description of its important safety and pollution prevention features, and a table indicating the type and the estimated maximum quantity of fuels, oil, and lubricants that will be stored on the facility (see third definition of ''facility'' under § 250.105).

§ 250.212 What information must accompany the EP?

The following information must accompany your EP:

(a) General information required by § 250.213;

(b) Geological and geophysical (G&G) information required by § 250.214;

(c) Hydrogen sulfide information required by § 250.215;

(d) Biological, physical, and socioeconomic information required by § 250.216;

(e) Solid and liquid wastes and discharges information and cooling water intake information required by § 250.217;

(f) Air emissions information required by § 250.218;

(g) Oil and hazardous substance spills information required by § 250.219;

(h) Alaska planning information required by § 250.220;

(i) Environmental monitoring information required by § 250.221;

(j) Lease stipulations information required by § 250.222;

(k) Mitigation measures information required by § 250.223;

(l) Support vessels and aircraft information required by § 250.224;

(m) Onshore support facilities information required by § 250.225;

(n) Coastal zone management information required by § 250.226;

(o) Environmental impact analysis information required by § 250.227; and

(p) Administrative information required by § 250.228.

§ 250.213 What general information must accompany the EP?

The following general information must accompany your EP:

(a) *Applications and permits.* A listing, including filing or approval status, of the Federal, State, and local application approvals or permits you must obtain to conduct your proposed exploration activities.

(b) *Drilling fluids.* A table showing the projected amount, discharge rate, and chemical constituents for each type (i.e., water-based, oil-based, synthetic-based) of drilling fluid you plan to use to drill your proposed exploration wells.

(c) *Chemical products.* A table showing the name and brief description, quantities to be stored, storage method, and rates of usage of the chemical products you will use to conduct your proposed exploration activities. List only those chemical products you will store or use in quantities greater than the amounts defined as Reportable Quantities in 40 CFR part 302, or amounts specified by the Regional Supervisor.

(d) *New or unusual technology.* A description and discussion of any new or unusual technology (see definition under § 250.200) you will use to carry out your proposed exploration activities. In the public information copies of your EP, you may exclude any proprietary information from this description. In that case, include a brief discussion of the general subject matter of the omitted information. If you will not use any new or unusual technology to carry out your proposed exploration activities, include a statement so indicating.

(e) *Bonds, oil spill financial responsibility, and well control statements.* Statements attesting that:

(1) The activities and facilities proposed in your EP are or will be covered by an appropriate bond under 30 CFR part 256, subpart I;

(2) You have demonstrated or will demonstrate oil spill financial responsibility for facilities proposed in your EP according to 30 CFR part 253; and

(3) You have or will have the financial capability to drill a relief well and conduct other emergency well control operations.

(f) *Suspensions of operations.* A brief discussion of any suspensions of operations that you anticipate may be necessary in the course of conducting your activities under the EP.

(g) *Blowout scenario.* A scenario for the potential blowout of the proposed well in your EP that you expect will have the highest volume of liquid hydrocarbons. Include the estimated flow rate, total volume, and maximum duration of the potential blowout. Also, discuss the potential for the well to bridge over, the likelihood for surface intervention to stop the blowout, the availability of a rig to drill a relief well, and rig package constraints. Estimate the time it would take to drill a relief well.

(h) *Contact.* The name, address (e-mail address, if available), and telephone number of the person with whom the Regional Supervisor and any affected State(s) can communicate about your EP.

§ 250.214 What geological and geophysical (G&G) information must accompany the EP?

The following G&G information must accompany your EP:

(a) *Geological description.* A geological description of the prospect(s).

(b) *Structure contour maps.* Current structure contour maps (depth-based, expressed in feet subsea) drawn on the top of each prospective hydrocarbon-bearing reservoir showing the locations of proposed wells.

(c) *Two-dimensional (2–D) or three-dimensional (3–D) seismic lines.* Copies of migrated and annotated 2–D or 3–D seismic lines (with depth scale) intersecting at or near your proposed well locations. You are not required to conduct both 2–D and 3–D seismic surveys if you choose to conduct only one type of survey. If you have conducted both types of surveys, the Regional Supervisor may instruct you to submit the results of both surveys. You must interpret and display this information. Because of its volume, provide this information as an enclosure to only one proprietary copy of your EP.

(d) *Geological cross-sections.* Interpreted geological cross-sections showing the location and depth of each proposed well.

(e) *Shallow hazards report.* A shallow hazards report based on information obtained from a high-resolution geophysical survey, or a reference to such report if you have already submitted it to the Regional Supervisor.

(f) *Shallow hazards assessment.* For each proposed well, an assessment of any seafloor and subsurface geological and manmade features and conditions that may adversely affect your proposed drilling operations.

(g) *High-resolution seismic lines.* A copy of the high-resolution survey line closest to each of your proposed well locations. Because of its volume, provide this information as an enclosure to only one proprietary copy of your EP. You are not required to provide this information if the surface location of your proposed well has been approved in a previously submitted EP, DPP, or DOCD.

(h) *Stratigraphic column.* A generalized biostratigraphic/lithostratigraphic column from the surface to the total depth of the prospect.

(i) *Time-versus-depth chart.* A seismic travel time-versus-depth chart based on the appropriate velocity analysis in the area of interpretation and specifying the geodetic datum.

(j) *Geochemical information.* A copy of any geochemical reports you used or generated.

(k) *Future G&G activities.* A brief description of the types of G&G explorations and development G&G activities you may conduct for lease or unit purposes after your EP is approved.

§ 250.215 What hydrogen sulfide (H_2S) information must accompany the EP?

The following H_2S information, as applicable, must accompany your EP:

(a) *Concentration.* The estimated concentration of any H_2S you might encounter while you conduct your proposed exploration activities.

(b) *Classification.* Under § 250.490(c), a request that the Regional Supervisor classify the area of your proposed exploration activities as either H_2S absent, H_2S present, or H_2S unknown. Provide sufficient information to justify your request.

(c) *H_2S Contingency Plan.* If you ask the Regional Supervisor to classify the area of your proposed exploration activities as either H_2S present or H_2S unknown, an H_2S Contingency Plan prepared under § 250.490(f), or a reference to an approved or submitted H_2S Contingency Plan that covers the proposed exploration activities.

(d) *Modeling report.* If you modeled a potential H_2S release when developing your EP, modeling report or the modeling results, or a reference to such report or results if you have already submitted it to the Regional Supervisor.

(1) The analysis in the modeling report must be specific to the particular site of your proposed exploration activities, and must consider any nearby human-occupied OCS facilities, shipping lanes, fishery areas, and other points where humans may be subject to potential exposure from an H_2S release from your proposed exploration activities.

(2) If any H_2S emissions are projected to affect an onshore location in concentrations greater than 10 parts per million, the modeling analysis must be consistent with the Environmental Protection Agency's (EPA) risk management plan methodologies outlined in 40 CFR part 68.

§ 250.216 What biological, physical, and socioeconomic information must accompany the EP?

If you obtain the following information in developing your EP, or if the Regional Supervisor requires you to obtain it, you must include a report, or the information obtained, or a reference to such a report or information if you have already submitted it to the Regional Supervisor, as accompanying information:

(a) *Biological environment reports.* Site-specific information on chemosynthetic communities, sensitive underwater features, marine sanctuaries, or other areas of biological concern.

(b) *Physical environment reports.* Site-specific meteorological, physical oceanographic, geotechnical reports, or archaeological reports (if required under § 250.194).

(c) *Socioeconomic study reports.* Socioeconomic information regarding your proposed exploration activities.

§ 250.217 What solid and liquid wastes and discharges information and cooling water intake information must accompany the EP?

The following solid and liquid wastes and discharges information and cooling water intake information must accompany your EP:

(a) *Projected wastes.* A table providing the name, brief description, projected quantity, and composition of solid and liquid wastes (such as spent drilling fluids, drill cuttings, trash, sanitary and domestic wastes, and chemical product wastes) likely to be generated by your proposed exploration activities. Describe:

(1) The methods you used for determining this information; and

(2) Your plans for treating, storing, and downhole disposal of these wastes at your drilling location(s).

(b) *Projected ocean discharges.* If any of your solid and liquid wastes will be discharged overboard, or are planned discharges from manmade islands:

(1) A table showing the name, projected amount, and rate of discharge for each waste type; and

(2) A description of the discharge method (such as shunting through a downpipe, etc.) you will use.

(c) *National Pollutant Discharge Elimination System (NPDES) permit.* (1) A discussion of how you will comply with the provisions of the applicable general NPDES permit that covers your proposed exploration activities; or

(2) A copy of your application for an individual NPDES permit. Briefly describe the major discharges and methods you will use for compliance.

(d) *Modeling report.* The modeling report or the modeling results (if you modeled the discharges of your projected solid or liquid wastes when developing your EP), or a reference to such report or results if you have already submitted it to the Regional Supervisor.

(e) *Projected cooling water intake.* A table for each cooling water intake structure likely to be used by your proposed exploration activities that includes a brief description of the cooling water intake structure, daily water intake rate, water intake through

screen velocity, percentage of water intake used for cooling water, mitigation measures for reducing impingement and entrainment of aquatic organisms, and biofouling prevention measures.

§ 250.218 What air emissions information must accompany the EP?

The following air emissions information, as applicable, must accompany your EP:

(a) *Projected emissions.* Tables showing the projected emissions of sulphur dioxide (SO_2), particulate matter in the form of PM_{10} and $PM_{2.5}$ when applicable, nitrogen oxides (NO_X), carbon monoxide (CO), and volatile organic compounds (VOC) that will be generated by your proposed exploration activities.

(1) For each source on or associated with the drilling unit (including well test flaring and well protection structure installation), you must list:

(i) The projected peak hourly emissions;

(ii) The total annual emissions in tons per year;

(iii) Emissions over the duration of the proposed exploration activities;

(iv) The frequency and duration of emissions; and

(v) The total of all emissions listed in paragraphs (a)(1)(i) through (iv) of this section.

(2) You must provide the basis for all calculations, including engine size and rating, and applicable operational information.

(3) You must base the projected emissions on the maximum rated capacity of the equipment on the proposed drilling unit under its physical and operational design.

(4) If the specific drilling unit has not yet been determined, you must use the maximum emission estimates for the type of drilling unit you will use.

(b) *Emission reduction measures.* A description of any proposed emission reduction measures, including the affected source(s), the emission reduction control technologies or procedures, the quantity of reductions to be achieved, and any monitoring system you propose to use to measure emissions.

(c) *Processes, equipment, fuels, and combustibles.* A description of processes, processing equipment, combustion equipment, fuels, and storage units. You must include the characteristics and the frequency, duration, and maximum burn rate of any well test fluids to be burned.

(d) *Distance to shore.* Identification of the distance of your drilling unit from the mean high water mark (mean higher high water mark on the Pacific coast) of the adjacent State.

(e) *Non-exempt drilling units.* A description of how you will comply with § 250.303 when the projected emissions of SO_2, PM, NO_X, CO, or VOC, that will be generated by your proposed exploration activities, are greater than the respective emission exemption amounts ''E'' calculated using the formulas in § 250.303(d). When MMS requires air quality modeling, you must use the guidelines in Appendix W of 40 CFR part 51 with a model approved by the Director. Submit the best available meteorological information and data consistent with the model(s) used.

(f) *Modeling report.* A modeling report or the modeling results (if § 250.303 requires you to use an approved air quality model to model projected air emissions in developing your EP), or a reference to such a report or results if you have already submitted it to the Regional Supervisor.

§ 250.219 What oil and hazardous substance spills information must accompany the EP?

The following information regarding potential spills of oil (see definition under 30 CFR 254.6) and hazardous substances (see definition under 40 CFR part 116) as applicable, must accompany your EP:

(a) *Oil spill response planning.* The material required under paragraph (a)(1) or (a)(2) of this section:

(1) An Oil Spill Response Plan (OSRP) for the facilities you will use to conduct your exploration activities prepared according to the requirements of 30 CFR part 254, subpart B; or

(2) Reference to your approved regional OSRP (see 30 CFR 254.3) to include:

(i) A discussion of your regional OSRP;

(ii) The location of your primary oil spill equipment base and staging area;

(iii) The name(s) of your oil spill removal organization(s) for both equipment and personnel;

(iv) The calculated volume of your worst case discharge scenario (see 30 CFR 254.26(a)), and a comparison of the appropriate worst case discharge scenario in your approved regional OSRP with the worst case discharge scenario that could result from your proposed exploration activities; and

(v) A description of the worst case discharge scenario that could result from your proposed exploration activities (see 30 CFR 254.26(b), (c), (d), and (e)).

(b) *Modeling report.* If you model a potential oil or hazardous substance spill in developing your EP, a modeling report or the modeling results, or a reference to such report or results if you have already submitted it to the Regional Supervisor.

§ 250.220 If I propose activities in the Alaska OCS Region, what planning information must accompany the EP?

If you propose exploration activities in the Alaska OCS Region, the following planning information must accompany your EP:

(a) *Emergency plans.* A description of your emergency plans to respond to a blowout, loss or disablement of a drilling unit, and loss of or damage to support craft.

(b) *Critical operations and curtailment procedures.* Critical operations and curtailment procedures for your exploration activities. The procedures must identify ice conditions, weather, and other constraints under which the exploration activities will either be curtailed or not proceed.

§ 250.221 What environmental monitoring information must accompany the EP?

The following environmental monitoring information, as applicable, must accompany your EP:

(a) *Monitoring systems.* A description of any existing and planned monitoring systems that are measuring, or will measure, environmental conditions or will provide project-specific data or information on the impacts of your exploration activities.

(b) *Flower Garden Banks National Marine Sanctuary (FGBNMS).* If you propose to conduct exploration activities within the protective zones of the FGBNMS, a description of your provisions for monitoring the impacts of an oil spill on the environmentally sensitive resources at the FGBNMS.

§ 250.222 What lease stipulations information must accompany the EP?

A description of the measures you took, or will take, to satisfy the conditions of lease stipulations related to your proposed exploration activities must accompany your EP.

§ 250.223 What mitigation measures information must accompany the EP?

If you propose to use any measures, beyond those required by the regulations in this part, to minimize or mitigate environmental impacts from your proposed exploration activities, a description of the measures you will use must accompany your EP.

§ 250.224 What information on support vessels, offshore vehicles, and aircraft you will use must accompany the EP?

The following information on the support vessels, offshore vehicles, and aircraft you will use must accompany your EP:

(a) *General.* A description of the crew boats, supply boats, anchor handling vessels, tug boats, barges, ice management vessels, other vessels, offshore vehicles, and aircraft you will use to support your exploration activities. The description of vessels and offshore vehicles must estimate the storage capacity of their fuel tanks and the frequency of their visits to your drilling unit.

(b) *Air emissions.* A table showing the source, composition, frequency, and duration of the air emissions likely to be generated by the support vessels, offshore vehicles, and aircraft you will use that will operate within 25 miles of your drilling unit.

(c) *Drilling fluids and chemical products transportation.* A description of the transportation method and quantities of drilling fluids and chemical products (see § 250.213(b) and (c)) you will transport from the onshore support facilities you will use to your drilling unit.

(d) *Solid and liquid wastes transportation.* A description of the transportation method and a brief description of the composition, quantities, and destination(s) of solid and liquid wastes (see § 250.217(a)) you will transport from your drilling unit.

(e) *Vicinity map.* A map showing the location of your proposed exploration activities relative to the shoreline. The map must depict the primary route(s) the support vessels and aircraft will use when traveling between the onshore support facilities you will use and your drilling unit.

§ 250.225 What information on the onshore support facilities you will use must accompany the EP?

The following information on the onshore support facilities you will use must accompany your EP:

(a) *General.* A description of the onshore facilities you will use to provide supply and service support for your proposed exploration activities (e.g., service bases and mud company docks).

(1) Indicate whether the onshore support facilities are existing, to be constructed, or to be expanded.

(2) If the onshore support facilities are, or will be, located in areas not adjacent to the Western GOM, provide a timetable for acquiring lands (including rights-of-way and easements) and constructing or expanding the facilities. Describe any State or Federal permits or approvals (dredging, filling, etc.) that would be required for constructing or expanding them.

(b) *Air emissions.* A description of the source, composition, frequency, and duration of the air emissions (attributable to your proposed exploration activities) likely to be generated by the onshore support facilities you will use.

(c) *Unusual solid and liquid wastes.* A description of the quantity, composition, and method of disposal of any unusual solid and liquid wastes (attributable to your proposed exploration activities) likely to be generated by the onshore support facilities you will use. Unusual wastes are those wastes not specifically addressed in the relevant National Pollution Discharge Elimination System (NPDES) permit.

(d) *Waste disposal.* A description of the onshore facilities you will use to store and dispose of solid and liquid wastes generated by your proposed exploration activities (see § 250.217) and the types and quantities of such wastes.

§ 250.226 What Coastal Zone Management Act (CZMA) information must accompany the EP?

The following CZMA information must accompany your EP:

(a) *Consistency certification.* A copy of your consistency certification under section 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76(d) stating that the proposed exploration activities described in detail in this EP comply with (name of State(s)) approved coastal management program(s) and will be conducted in a manner that is consistent with such program(s); and

(b) *Other information.* ''Information'' as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2)) and ''Analysis'' as required by 15 CFR 930.58(a)(3).

§ 250.227 What environmental impact analysis (EIA) information must accompany the EP?

The following EIA information must accompany your EP:

(a) *General requirements.* Your EIA must:

(1) Assess the potential environmental impacts of your proposed exploration activities;

(2) Be project specific; and

(3) Be as detailed as necessary to assist the Regional Supervisor in complying with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and other relevant Federal laws.

(b) *Resources, conditions, and activities.* Your EIA must describe those resources, conditions, and activities listed below that could be affected by your proposed exploration activities, or that could affect the construction and operation of facilities or structures, or the activities proposed in your EP.

(1) Meteorology, oceanography, geology, and shallow geological or manmade hazards;

(2) Air and water quality;

(3) Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, and plant life;

(4) Threatened or endangered species and their critical habitat as defined by the Endangered Species Act of 1973;

(5) Sensitive biological resources or habitats such as essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, and calving grounds;

(6) Archaeological resources;

(7) Socioeconomic resources including employment, existing offshore and coastal infrastructure (including major sources of supplies, services, energy, and water), land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including typical fishing seasons, location, and type), minority and lower income groups, and coastal zone management programs;

(8) Coastal and marine uses such as military activities, shipping, and mineral exploration or development; and

(9) Other resources, conditions, and activities identified by the Regional Supervisor.

(c) *Environmental impacts.* Your EIA must:

(1) Analyze the potential direct and indirect impacts (including those from accidents and cooling water intake structures) that your proposed exploration activities will have on the identified resources, conditions, and activities;

(2) Analyze any potential cumulative impacts from other activities to those identified resources, conditions, and activities potentially impacted by your proposed exploration activities;

(3) Describe the type, severity, and duration of these potential impacts and their biological, physical, and other consequences and implications;

(4) Describe potential measures to minimize or mitigate these potential impacts; and

(5) Summarize the information you incorporate by reference.

(d) *Consultation.* Your EIA must include a list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your proposed exploration activities.

(e) *References cited.* Your EIA must include a list of the references that you cite in the EIA.

§ 250.228 What administrative information must accompany the EP?

The following administrative information must accompany your EP:

(a) *Exempted information description (public information copies only).* A description of the general subject matter of the proprietary information that is included in the proprietary copies of your EP or its accompanying information.

(b) *Bibliography.* (1) If you reference a previously submitted EP, DPP, DOCD, study report, survey report, or other material in your EP or its accompanying information, a list of the referenced material; and

(2) The location(s) where the Regional Supervisor can inspect the cited referenced material if you have not submitted it.

Review and Decision Process for the EP

§ 250.231 After receiving the EP, what will MMS do?

(a) *Determine whether deemed submitted.* Within 15 working days after receiving your proposed EP and its accompanying information, the Regional Supervisor will review your submission and deem your EP submitted if:

(1) The submitted information, including the information that must accompany the EP (refer to the list in § 250.212), fulfills requirements and is sufficiently accurate;

(2) You have provided all needed additional information (see § 250.201(b)); and

(3) You have provided the required number of copies (see § 250.206(a)).

(b) *Identify problems and deficiencies.* If the Regional Supervisor determines that you have not met one or more of the conditions in paragraph (a) of this section, the Regional Supervisor will notify you of the problem or deficiency within 15 working days after the Regional Supervisor receives your EP and its accompanying information. The Regional Supervisor will not deem your EP submitted until you have corrected all problems or deficiencies identified in the notice.

(c) *Deemed submitted notification.* The Regional Supervisor will notify you when the EP is deemed submitted.

§ 250.232 What actions will MMS take after the EP is deemed submitted?

(a) *State and CZMA consistency reviews.* Within 2 working days after deeming your EP submitted under § 250.231, the Regional Supervisor will use receipted mail or alternative method to send a public information copy of the EP and its accompanying information to the following:

(1) *The Governor of each affected State.* The Governor has 21 calendar days after receiving your deemed-submitted EP to submit comments. The Regional Supervisor will not consider comments received after the deadline.

(2) *The CZMA agency of each affected State.* The CZMA consistency review period under section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(ii)) and 15 CFR 930.78 begins when the State's CZMA agency receives a copy of your deemed-submitted EP, consistency certification, and required necessary data and information (see 15 CFR 930.77(a)(1)).

(b) *MMS compliance review.* The Regional Supervisor will review the exploration activities described in your proposed EP to ensure that they conform to the performance standards in § 250.202.

(c) *MMS environmental impact evaluation.* The Regional Supervisor will evaluate the environmental impacts of the activities described in your proposed EP and prepare environmental documentation under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the implementing regulations (40 CFR parts 1500 through 1508).

(d) *Amendments.* During the review of your proposed EP, the Regional Supervisor may require you, or you may elect, to change your EP. If you elect to amend your EP, the Regional Supervisor may determine that your EP, as amended, is subject to the requirements of § 250.231.

§ 250.233 What decisions will MMS make on the EP and within what timeframe?

(a) *Timeframe.* The Regional Supervisor will take one of the actions shown in the table in paragraph (b) of this section within 30 calendar days after the Regional Supervisor deems your EP submitted under § 250.231, or receives the last amendment to your proposed EP, whichever occurs later.

(b) *MMS decision.* By the deadline in paragraph (a) of this section, the Regional Supervisor will take one of the following actions:

The regional supervisor will . . .	If . . .	And then . . .
(1) Approve your EP	It complies with all applicable requirements	The Regional Supervisor will notify you in writing of the decision and may require you to meet certain conditions, including those to provide monitoring information.
(2) Require you to modify your proposed EP.	The Regional Supervisor finds that it is inconsistent with the lease, the Act, the regulations prescribed under the Act, or notify Federal laws.	The Regional Supervisor will notify you in writing of the decision and describe the modifications you must make to your proposed EP to ensure it complies with all applicable requirements.
(3) Disapprove your EP	Your proposed activities would probably cause serious harm or damage to life (including fish or other aquatic life); property; any mineral (in areas leased or not leased); the national security or defense; or the marine, coastal, or human environment; and you cannot modify your proposed activities to avoid such condition(s).	(i) The Regional Supervisor will notify you in writing of the decision and describe the reason(s) for disapproving your EP. (ii) MMS may cancel your lease and compensate you under 43 U.S.C. 1334(a)(2)(C) and the implementing regulations in §§ 250.182, 250.184, and 250.185 and 30 CFR 256.77.

§ 250.234 How do I submit a modified EP or resubmit a disapproved EP, and when will MMS make a decision?

(a) *Modified EP.* If the Regional Supervisor requires you to modify your proposed EP under § 250.233(b)(2), you must submit the modification(s) to the Regional Supervisor in the same manner as for a new EP. You need submit only information related to the proposed modification(s).

(b) *Resubmitted EP.* If the Regional Supervisor disapproves your EP under § 250.233(b)(3), you may resubmit the disapproved EP if there is a change in the conditions that were the basis of its disapproval.

(c) *MMS review and timeframe.* The Regional Supervisor will use the performance standards in § 250.202 to either approve, require you to further modify, or disapprove your modified or resubmitted EP. The Regional

Supervisor will make a decision within 30 calendar days after the Regional Supervisor deems your modified or resubmitted EP to be submitted, or receives the last amendment to your modified or resubmitted EP, whichever occurs later.

§ 250.235 If a State objects to the EP's coastal zone consistency certification, what can I do?

If an affected State objects to the coastal zone consistency certification accompanying your proposed EP within the timeframe prescribed in § 250.233(a) or § 250.234(c), you may do one of the following:

(a) *Amend your EP.* Amend your EP to accommodate the State's objection and submit the amendment to the Regional Supervisor for approval. The amendment needs to only address information related to the State's objection.

(b) *Appeal.* Appeal the State's objection to the Secretary of Commerce using the procedures in 15 CFR part 930, subpart H. The Secretary of Commerce will either:

(1) Grant your appeal by finding, under section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(iii)), that each activity described in detail in your EP is consistent with the objectives of the CZMA, or is otherwise necessary in the interest of national security; or

(2) Deny your appeal, in which case you may amend your EP as described in paragraph (a) of this section.

(a) *Withdraw your EP.* Withdraw your EP if you decide not to conduct your proposed exploration activities.

Contents of Development and Production Plans (DPP) and Development Operations Coordination Documents (DOCD)

§ 250.241 What must the DPP or DOCD include?

Your DPP or DOCD must include the following:

(a) *Description, objectives, and schedule.* A description, discussion of the objectives, and tentative schedule (from start to completion) of the development and production activities you propose to undertake. Examples of development and production activities include:

(1) Development drilling;

(2) Well test flaring;

(3) Installation of production platforms, satellite structures, subsea wellheads and manifolds, and lease term pipelines (see definition at § 250.105); and

(4) Installation of production facilities and conduct of production operations.

(b) *Location.* The location and water depth of each of your proposed wells and production facilities. Include a map showing the surface and bottom-hole location and water depth of each proposed well, the surface location of each production facility, and the locations of all associated drilling unit and construction barge anchors.

(c) *Drilling unit.* A description of the drilling unit and associated equipment you will use to conduct your proposed development drilling activities. Include a brief description of its important safety and pollution prevention features, and a table indicating the type and the estimated maximum quantity of fuels and oil that will be stored on the facility (see third definition of ''facility'' under § 250.105).

(d) *Production facilities.* A description of the production platforms, satellite structures, subsea wellheads and manifolds, lease term pipelines (see definition at § 250.105), production facilities, umbilicals, and other facilities you will use to conduct your proposed development and production activities. Include a brief description of their important safety and pollution prevention features, and a table indicating the type and the estimated maximum quantity of fuels and oil that will be stored on the facility (see third definition of ''facility'' under § 250.105).

§ 250.242 What information must accompany the DPP or DOCD?

The following information must accompany your DPP or DOCD.

(a) General information required by § 250.243;

(b) G&G information required by § 250.244;

(c) Hydrogen sulfide information required by § 250.245;

(d) Mineral resource conservation information required by § 250.246;

(e) Biological, physical, and socioeconomic information required by § 250.247;

(f) Solid and liquid wastes and discharges information and cooling water intake information required by § 250.248;

(g) Air emissions information required by § 250.249;

(h) Oil and hazardous substance spills information required by § 250.250;

(i) Alaska planning information required by § 250.251;

(j) Environmental monitoring information required by § 250.252;

(k) Lease stipulations information required by § 250.253;

(l) Mitigation measures information required by § 250.254;

(m) Decommissioning information required by § 250.255;

(n) Related facilities and operations information required by § 250.256;

(o) Support vessels and aircraft information required by § 250.257;

(p) Onshore support facilities information required by § 250.258;

(q) Sulphur operations information required by § 250.259;

(r) Coastal zone management information required by § 250.260;

(s) Environmental impact analysis information required by § 250.261; and

(t) Administrative information required by § 250.262.

§ 250.243 What general information must accompany the DPP or DOCD?

The following general information must accompany your DPP or DOCD:

(a) *Applications and permits.* A listing, including filing or approval status, of the Federal, State, and local application approvals or permits you must obtain to carry out your proposed development and production activities.

(b) *Drilling fluids.* A table showing the projected amount, discharge rate, and chemical constituents for each type (*i.e.*, water based, oil based, synthetic based) of drilling fluid you plan to use to drill your proposed development wells.

(c) *Production.* The following production information:

(1) Estimates of the average and peak rates of production for each type of production and the life of the reservoir(s) you intend to produce; and

(2) The chemical and physical characteristics of the produced oil (see definition under 30 CFR 254.6) that you will handle or store at the facilities you will use to conduct your proposed development and production activities.

(d) *Chemical products.* A table showing the name and brief description, quantities to be stored, storage method, and rates of usage of the chemical products you will use to conduct your proposed development and production activities. You need list only those chemical products you will store or use in quantities greater than the amounts defined as Reportable Quantities in 40 CFR part 302, or amounts specified by the Regional Supervisor.

(e) *New or unusual technology.* A description and discussion of any new or unusual technology (see definition under § 250.200) you will use to carry out your proposed development and production activities. In the public information copies of your DPP or DOCD, you may exclude any proprietary information from this description. In that case, include a brief discussion of the general subject matter of the omitted information. If you will not use any new or unusual technology to carry out your proposed development and production activities, include a statement so indicating.

(f) *Bonds, oil spill financial responsibility, and well control statements.* Statements attesting that:

(1) The activities and facilities proposed in your DPP or DOCD are or will be covered by an appropriate bond under 30 CFR part 256, subpart I;

(2) You have demonstrated or will demonstrate oil spill financial responsibility for facilities proposed in your DPP or DOCD, according to 30 CFR Part 253; and

(3) You have or will have the financial capability to drill a relief well and conduct other emergency well control operations.

(g) *Suspensions of production or operations.* A brief discussion of any suspensions of production or suspensions of operations that you anticipate may be necessary in the course of conducting your activities under the DPP or DOCD.

(h) *Blowout scenario.* A scenario for a potential blowout of the proposed well in your DPP or DOCD that you expect will have the highest volume of liquid hydrocarbons. Include the estimated flow rate, total volume, and maximum duration of the potential blowout. Also, discuss the potential for the well to bridge over, the likelihood for surface intervention to stop the blowout, the availability of a rig to drill a relief well, and rig package constraints. Estimate the time it would take to drill a relief well.

(i) *Contact.* The name, mailing address, (e-mail address if available), and telephone number of the person with whom the Regional Supervisor and the affected State(s) can communicate about your DPP or DOCD.

§ 250.244 What geological and geophysical (G&G) information must accompany the DPP or DOCD?

The following G&G information must accompany your DPP or DOCD:

(a) *Geological description.* A geological description of the prospect(s).

(b) *Structure contour maps.* Current structure contour maps (depth-based, expressed in feet subsea) showing depths of expected productive formations and the locations of proposed wells.

(c) *Two dimensional (2–D) or three-dimensional (3–D) seismic lines.* Copies of migrated and annotated 2–D or 3–D seismic lines (with depth scale) intersecting at or near your proposed well locations. You are not required to conduct both 2–D and 3–D seismic surveys if you choose to conduct only one type of survey. If you have conducted both types of surveys, the Regional Supervisor may instruct you to submit the results of both surveys. You must interpret and display this information. Provide this information as an enclosure to only one proprietary copy of your DPP or DOCD.

(d) *Geological cross-sections.* Interpreted geological cross-sections showing the depths of expected productive formations.

(e) *Shallow hazards report.* A shallow hazards report based on information obtained from a high-resolution geophysical survey, or a reference to such report if you have already submitted it to the Regional Supervisor.

(f) *Shallow hazards assessment.* For each proposed well, an assessment of any seafloor and subsurface geologic and manmade features and conditions that may adversely affect your proposed drilling operations.

(g) *High resolution seismic lines.* A copy of the high-resolution survey line closest to each of your proposed well locations. Because of its volume, provide this information as an enclosure to only one proprietary copy of your DPP or DOCD. You are not required to provide this information if the surface location of your proposed well has been approved in a previously submitted EP, DPP, or DOCD.

(h) *Stratigraphic column.* A generalized biostratigraphic/lithostratigraphic column from the surface to the total depth of each proposed well.

(i) *Time-versus-depth chart.* A seismic travel time-versus-depth chart based on the appropriate velocity analysis in the area of interpretation and specifying the geodetic datum.

(j) *Geochemical information.* A copy of any geochemical reports you used or generated.

(k) *Future G&G activities.* A brief description of the G&G explorations and development G&G activities that you may conduct for lease or unit purposes after your DPP or DOCD is approved.

§ 250.245 What hydrogen sulfide (H_2S) information must accompany the DPP or DOCD?

The following H_2S information, as applicable, must accompany your DPP or DOCD:

(a) *Concentration.* The estimated concentration of any H_2S you might encounter or handle while you conduct your proposed development and production activities.

(b) *Classification.* Under § 250.490(c), a request that the Regional Supervisor classify the area of your proposed development and production activities as either H_2S absent, H_2S present, or H_2S unknown. Provide sufficient information to justify your request.

(c) *H_2S* Contingency Plan. If you request that the Regional Supervisor classify the area of your proposed development and production activities as either H_2S present or H_2S unknown, an H_2S Contingency Plan prepared under § 250.490(f), or a reference to an approved or submitted H_2S Contingency Plan that covers the proposed development and production activities.

(d) *Modeling report.* (1) If you have determined or estimated that the concentration of any H_2S you may encounter or handle while you conduct your development and production activities will be greater than 500 parts per million (ppm), you must:

(i) Model a potential worst case H_2S release from the facilities you will use to conduct your proposed development and production activities; and

(ii) Include a modeling report or modeling results, or a reference to such report or results if you have already submitted it to the Regional Supervisor.

(2) The analysis in the modeling report must be specific to the particular site of your development and production activities, and must consider any nearby human-occupied OCS facilities, shipping lanes, fishery areas, and other points where humans may be subject to potential exposure from an H_2S release from your proposed activities.

(3) If any H_2S emissions are projected to affect an onshore location in concentrations greater than 10 ppm, the modeling analysis must be consistent with the EPA's risk management plan methodologies outlined in 40 CFR part 68.

§ 250.246 What mineral resource conservation information must accompany the DPP or DOCD?

The following mineral resource conservation information, as applicable, must accompany your DPP or DOCD:

(a) *Technology and reservoir engineering practices and procedures.* A description of the technology and reservoir engineering practices and procedures you will use to increase the ultimate recovery of oil and gas (*e.g.*, secondary, tertiary, or other enhanced recovery practices). If you will not use enhanced recovery practices initially, provide an explanation of the methods you considered and the reasons why you are not using them.

(b) *Technology and recovery practices and procedures.* A description of the technology and recovery practices and procedures you will use to ensure optimum recovery of oil and gas or sulphur.

(c) *Reservoir development.* A discussion of exploratory well results, other reservoir data, proposed well

spacing, completion methods, and other relevant well plan information.

§ 250.247 What biological, physical, and socioeconomic information must accompany the DPP or DOCD?

If you obtain the following information in developing your DPP or DOCD, or if the Regional Supervisor requires you to obtain it, you must include a report, or the information obtained, or a reference to such a report or information if you have already submitted it to the Regional Supervisor, as accompanying information:

(a) *Biological environment reports.* Site-specific information on chemosynthetic communities, sensitive underwater features, marine sanctuaries, or other areas of biological concern.

(b) *Physical environment reports.* Site-specific meteorological, physical oceanographic, geotechnical reports, or archaeological reports (if required under § 250.194).

(c) *Socioeconomic study reports.* Socioeconomic information related to your proposed development and production activities.

§ 250.248 What solid and liquid wastes and discharges information and cooling water intake information must accompany the DPP or DOCD?

The following solid and liquid wastes and discharges information and cooling water intake information must accompany your DPP or DOCD:

(a) *Projected wastes.* A table providing the name, brief description, projected quantity, and composition of solid and liquid wastes (such as spent drilling fluids, drill cuttings, trash, sanitary and domestic wastes, produced waters, and chemical product wastes) likely to be generated by your proposed development and production activities. Describe:

(1) The methods you used for determining this information; and

(2) Your plans for treating, storing, and downhole disposal of these wastes at your facility location(s).

(b) *Projected ocean discharges.* If any of your solid and liquid wastes will be discharged overboard or are planned discharges from manmade islands:

(1) A table showing the name, projected amount, and rate of discharge for each waste type; and

(2) A description of the discharge method (such as shunting through a downpipe, adding to a produced water stream, etc.) you will use.

(c) *National Pollutant Discharge Elimination System (NPDES) permit.* (1) A discussion of how you will comply with the provisions of the applicable general NPDES permit that covers your proposed development and production activities; or

(2) A copy of your application for an individual NPDES permit. Briefly describe the major discharges and methods you will use for compliance.

(d) *Modeling report.* A modeling report or the modeling results (if you modeled the discharges of your projected solid or liquid wastes in developing your DPP or DOCD), or a reference to such report or results if you have already submitted it to the Regional Supervisor.

(e) *Projected cooling water intake.* A table for each cooling water intake structure likely to be used by your proposed development and production activities that includes a brief description of the cooling water intake structure, daily water intake rate, water intake through-screen velocity, percentage of water intake used for cooling water, mitigation measures for reducing impingement and entrainment of aquatic organisms, and biofouling prevention measures.

§ 250.249 What air emissions information must accompany the DPP or DOCD?

The following air emissions information, as applicable, must accompany your DPP or DOCD:

(a) *Projected emissions.* Tables showing the projected emissions of sulphur dioxide (SO_2), particulate matter in the form of PM_{10} and $PM_{2.5}$ when applicable, nitrogen oxides (NO_X), carbon monoxide (CO), and volatile organic compounds (VOC) that will be generated by your proposed development and production activities.

(1) For each source on or associated with the facility you will use to conduct your proposed development and production activities, you must list:

(i) The projected peak hourly emissions;

(ii) The total annual emissions in tons per year;

(iii) Emissions over the duration of the proposed development and production activities;

(iv) The frequency and duration of emissions; and

(v) The total of all emissions listed in paragraph (a)(1)(i) through (iv) of this section.

(2) If your proposed production and development activities would result in an increase in the emissions of an air pollutant from your facility to an amount greater than the amount specified in your previously approved DPP or DOCD, you must show the revised emission rates for each source as well as the incremental change for each source.

(3) You must provide the basis for all calculations, including engine size and rating, and applicable operational information.

(4) You must base the projected emissions on the maximum rated capacity of the equipment and the maximum throughput of the facility you will use to conduct your proposed development and production activities under its physical and operational design.

(5) If the specific drilling unit has not yet been determined, you must use the maximum emission estimates for the type of drilling unit you will use.

(b) *Emission reduction measures.* A description of any proposed emission reduction measures, including the affected source(s), the emission reduction control technologies or procedures, the quantity of reductions to be achieved, and any monitoring system you propose to use to measure emissions.

(c) *Processes, equipment, fuels, and combustibles.* A description of processes, processing equipment, combustion equipment, fuels, and storage units. You must include the frequency, duration, and maximum burn rate of any flaring activity.

(d) *Distance to shore.* Identification of the distance of the site of your proposed development and production activities from the mean high water mark (mean higher high water mark on the Pacific coast) of the adjacent State.

(e) *Non-exempt facilities.* A description of how you will comply with § 250.303 when the projected emissions of SO_2, PM, NO_X, CO, or VOC that will be generated by your proposed development and production activities are greater than the respective emission exemption amounts ''E'' calculated using the formulas in § 250.303(d). When MMS requires air quality modeling, you must use the guidelines in Appendix W of 40 CFR part 51 with a model approved by the Director. Submit the best available meteorological information and data consistent with the model(s) used.

(f) *Modeling report.* A modeling report or the modeling results (if § 250.303 requires you to use an approved air quality model to model projected air emissions in developing your DPP or DOCD), or a reference to such report or results if you have already submitted it to the Regional Supervisor.

§ 250.250 What oil and hazardous substance spills information must accompany the DPP or DOCD?

The following information regarding potential spills of oil (see definition under 30 CFR 254.6) and hazardous substances (see definition under 40 CFR

part 116), as applicable, must accompany your DPP or DOCD:

(a) *Oil spill response planning.* The material required under paragraph (a)(1) or (a)(2) of this section:

(1) An Oil Spill Response Plan (OSRP) for the facilities you will use to conduct your proposed development and production activities prepared according to the requirements of 30 CFR part 254, subpart B; or

(2) Reference to your approved regional OSRP (see 30 CFR 254.3) to include:

(i) A discussion of your regional OSRP;

(ii) The location of your primary oil spill equipment base and staging area;

(iii) The name(s) of your oil spill removal organization(s) for both equipment and personnel;

(iv) The calculated volume of your worst case discharge scenario (see 30 CFR 254.26(a)), and a comparison of the appropriate worst case discharge scenario in your approved regional OSRP with the worst case discharge scenario that could result from your proposed development and production activities; and

(v) A description of the worst case oil spill scenario that could result from your proposed development and production activities (see 30 CFR 254.26(b), (c), (d), and (e)).

(b) *Modeling report.* If you model a potential oil or hazardous substance spill in developing your DPP or DOCD, a modeling report or the modeling results, or a reference to such report or results if you have already submitted it to the Regional Supervisor.

§ 250.251 If I propose activities in the Alaska OCS Region, what planning information must accompany the DPP?

If you propose development and production activities in the Alaska OCS Region, the following planning information must accompany your DPP:

(a) *Emergency plans.* A description of your emergency plans to respond to a blowout, loss or disablement of a drilling unit, and loss of or damage to support craft; and

(b) *Critical operations and curtailment procedures.* Critical operations and curtailment procedures for your development and production activities. The procedures must identify ice conditions, weather, and other constraints under which the development and production activities will either be curtailed or not proceed.

§ 250.252 What environmental monitoring information must accompany the DPP or DOCD?

The following environmental monitoring information, as applicable, must accompany your DPP or DOCD:

(a) *Monitoring systems.* A description of any existing and planned monitoring systems that are measuring, or will measure, environmental conditions or will provide project-specific data or information on the impacts of your development and production activities.

(b) *Flower Garden Banks National Marine Sanctuary (FGBNMS).* If you propose to conduct development and production activities within the protective zones of the FGBNMS, a description of your provisions for monitoring the impacts of an oil spill on the environmentally sensitive resources of the FGBNMS.

§ 250.253 What lease stipulations information must accompany the DPP or DOCD?

A description of the measures you took, or will take, to satisfy the conditions of lease stipulations related to your proposed development and production activities must accompany your DPP or DOCD.

§ 250.254 What mitigation measures information must accompany the DPP or DOCD?

If you propose to use any measures, beyond those required by the regulations in this part, to minimize or mitigate environmental impacts from your proposed development and production activities, a description of the measures you will use must accompany your DPP or DOCD.

§ 250.255 What decommissioning information must accompany the DPP or DOCD?

A brief description of how you intend to decommission your wells, platforms, pipelines, and other facilities, and clear your site(s) must accompany your DPP or DOCD.

§ 250.256 What related facilities and operations information must accompany the DPP or DOCD?

The following information regarding facilities and operations directly related to your proposed development and production activities must accompany your DPP or DOCD.

(a) *OCS facilities and operations.* A description and location of any of the following that directly relate to your proposed development and production activities:

(1) Drilling units;

(2) Production platforms;

(3) Right-of-way pipelines (including those that transport chemical products and produced water); and

(4) Other facilities and operations located on the OCS (regardless of ownership).

(b) *Transportation system.* A discussion of the transportation system that you will use to transport your production to shore, including:

(1) Routes of any new pipelines;

(2) Information concerning barges and shuttle tankers, including the storage capacity of the transport vessel(s), and the number of transfers that will take place per year;

(3) Information concerning any intermediate storage or processing facilities;

(4) An estimate of the quantities of oil, gas, or sulphur to be transported from your production facilities; and

(5) A description and location of the primary onshore terminal.

§ 250.257 What information on the support vessels, offshore vehicles, and aircraft you will use must accompany the DPP or DOCD?

The following information on the support vessels, offshore vehicles, and aircraft you will use must accompany your DPP or DOCD:

(a) *General.* A description of the crew boats, supply boats, anchor handling vessels, tug boats, barges, ice management vessels, other vessels, offshore vehicles, and aircraft you will use to support your development and production activities. The description of vessels and offshore vehicles must estimate the storage capacity of their fuel tanks and the frequency of their visits to the facilities you will use to conduct your proposed development and production activities.

(b) *Air emissions.* A table showing the source, composition, frequency, and duration of the air emissions likely to be generated by the support vessels, offshore vehicles, and aircraft you will use that will operate within 25 miles of the facilities you will use to conduct your proposed development and production activities.

(c) *Drilling fluids and chemical products transportation.* A description of the transportation method and quantities of drilling fluids and chemical products (see § 250.243(b) and (d)) you will transport from the onshore support facilities you will use to the facilities you will use to conduct your proposed development and production activities.

(d) *Solid and liquid wastes transportation.* A description of the transportation method and a brief description of the composition,

quantities, and destination(s) of solid and liquid wastes (see § 250.248(a)) you will transport from the facilities you will use to conduct your proposed development and production activities.

(e) *Vicinity map.* A map showing the location of your proposed development and production activities relative to the shoreline. The map must depict the primary route(s) the support vessels and aircraft will use when traveling between the onshore support facilities you will use and the facilities you will use to conduct your proposed development and production activities.

§ 250.258 What information on the onshore support facilities you will use must accompany the DPP or DOCD?

The following information on the onshore support facilities you will use must accompany your DPP or DOCD:

(a) *General.* A description of the onshore facilities you will use to provide supply and service support for your proposed development and production activities (*e.g.*, service bases and mud company docks).

(1) Indicate whether the onshore support facilities are existing, to be constructed, or to be expanded; and

(2) For DPPs only, provide a timetable for acquiring lands (including rights-of-way and easements) and constructing or expanding any of the onshore support facilities.

(b) *Air emissions.* A description of the source, composition, frequency, and duration of the air emissions (attributable to your proposed development and production activities) likely to be generated by the onshore support facilities you will use.

(c) *Unusual solid and liquid wastes.* A description of the quantity, composition, and method of disposal of any unusual solid and liquid wastes (attributable to your proposed development and production activities) likely to be generated by the onshore support facilities you will use. Unusual wastes are those wastes not specifically addressed in the relevant National Pollution Discharge Elimination System (NPDES) permit.

(d) *Waste disposal.* A description of the onshore facilities you will use to store and dispose of solid and liquid wastes generated by your proposed development and production activities (see § 250.248(a)) and the types and quantities of such wastes.

§ 250.259 What sulphur operations information must accompany the DPP or DOCD?

If you are proposing to conduct sulphur development and production activities, the following information must accompany your DPP or DOCD:

(a) *Bleedwater.* A discussion of the bleedwater that will be generated by your proposed sulphur activities, including the measures you will take to mitigate the potential toxic or thermal impacts on the environment caused by the discharge of bleedwater.

(b) *Subsidence.* An estimate of the degree of subsidence expected at various stages of your sulphur development and production activities, and a description of the measures you will take to mitigate the effects of subsidence on existing or potential oil and gas production, production platforms, and production facilities, and to protect the environment.

§ 250.260 What Coastal Zone Management Act (CZMA) information must accompany the DPP or DOCD?

The following CZMA information must accompany your DPP or DOCD:

(a) *Consistency certification.* A copy of your consistency certification under section 307(c)(3)(B) of the CZMA (16 U.S.C. 1456(c)(3)(B)) and 15 CFR 930.76(d) stating that the proposed development and production activities described in detail in this DPP or DOCD comply with (name of State(s)) approved coastal management program(s) and will be conducted in a manner that is consistent with such program(s); and

(b) *Other information.* ''Information'' as required by 15 CFR 930.76(a) and 15 CFR 930.58(a)(2)) and ''Analysis'' as required by 15 CFR 930.58(a)(3).

§ 250.261 What environmental impact analysis (EIA) information must accompany the DPP or DOCD?

The following EIA information must accompany your DPP or DOCD:

(a) *General requirements.* Your EIA must:

(1) Assess the potential environmental impacts of your proposed development and production activities;

(2) Be project specific; and

(3) Be as detailed as necessary to assist the Regional Supervisor in complying with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and other relevant Federal laws.

(b) *Resources, conditions, and activities.* Your EIA must describe those resources, conditions, and activities listed below that could be affected by your proposed development and production activities, or that could affect the construction and operation of facilities or structures or the activities proposed in your DPP or DOCD.

(1) Meteorology, oceanography, geology, and shallow geological or manmade hazards;

(2) Air and water quality;

(3) Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, and plant life;

(4) Threatened or endangered species and their critical habitat;

(5) Sensitive biological resources or habitats such as essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, rookeries, and calving grounds;

(6) Archaeological resources;

(7) Socioeconomic resources (including the approximate number, timing, and duration of employment of persons engaged in onshore support and construction activities), population (including the approximate number of people and families added to local onshore areas), existing offshore and onshore infrastructure (including major sources of supplies, services, energy, and water), types of contractors or vendors that may place a demand on local goods and services, land use, subsistence resources and harvest practices, recreation, recreational and commercial fishing (including seasons, location, and type), minority and lower income groups, and CZMA programs;

(8) Coastal and marine uses such as military activities, shipping, and mineral exploration or development; and

(9) Other resources, conditions, and activities identified by the Regional Supervisor.

(c) *Environmental impacts.* Your EIA must:

(1) Analyze the potential direct and indirect impacts (including those from accidents and cooling water intake structures) that your proposed development and production activities will have on the identified resources, conditions, and activities;

(2) Describe the type, severity, and duration of these potential impacts and their biological, physical, and other consequences and implications;

(3) Describe potential measures to minimize or mitigate these potential impacts;

(4) Describe any alternatives to your proposed development and production activities that you considered while developing your DPP or DOCD, and compare the potential environmental impacts; and

(5) Summarize the information you incorporate by reference.

(d) *Consultation.* Your EIA must include a list of agencies and persons with whom you consulted, or with whom you will be consulting, regarding potential impacts associated with your

proposed development and production activities.

(e) *References cited.* Your EIA must include a list of the references that you cite in the EIA.

§ 250.262 What administrative information must accompany the DPP or DOCD?

The following administrative information must accompany your DPP or DOCD:

(a) *Exempted information description (public information copies only).* A description of the general subject matter of the proprietary information that is included in the proprietary copies of your DPP or DOCD or its accompanying information.

(b) *Bibliography.* (1) If you reference a previously submitted EP, DPP, DOCD, study report, survey report, or other material in your DPP or DOCD or its accompanying information, a list of the referenced material; and

(2) The location(s) where the Regional Supervisor can inspect the cited referenced material if you have not submitted it.

Review and Decision Process for the DPP or DOCD

§ 250.266 After receiving the DPP or DOCD, what will MMS do?

(a) *Determine whether deemed submitted.* Within 25 working days after receiving your proposed DPP or DOCD and its accompanying information, the Regional Supervisor will deem your DPP or DOCD submitted if:

(1) The submitted information, including the information that must accompany the DPP or DOCD (refer to the list in § 250.242), fulfills requirements and is sufficiently accurate;

(2) You have provided all needed additional information (see § 250.201(b)); and

(3) You have provided the required number of copies (see § 250.206(a)).

(b) *Identify problems and deficiencies.* If the Regional Supervisor determines that you have not met one or more of the conditions in paragraph (a) of this section, the Regional Supervisor will notify you of the problem or deficiency within 25 working days after the Regional Supervisor receives your DPP or DOCD and its accompanying information. The Regional Supervisor will not deem your DPP or DOCD submitted until you have corrected all problems or deficiencies identified in the notice.

(c) *Deemed submitted notification.* The Regional Supervisor will notify you when your DPP or DOCD is deemed submitted.

§ 250.267 What actions will MMS take after the DPP or DOCD is deemed submitted?

(a) *State, local government, CZMA consistency, and other reviews.* Within 2 working days after the Regional Supervisor deems your DPP or DOCD submitted under § 250.266, the Regional Supervisor will use receipted mail or alternative method to send a public information copy of the DPP or DOCD and its accompanying information to the following:

(1) *The Governor of each affected State.* The Governor has 60 calendar days after receiving your deemed-submitted DPP or DOCD to submit comments and recommendations. The Regional Supervisor will not consider comments and recommendations received after the deadline.

(2) *The executive of any affected local government who requests a copy.* The executive of any affected local government has 60 calendar days after receipt of your deemed-submitted DPP or DOCD to submit comments and recommendations. The Regional Supervisor will not consider comments and recommendations received after the deadline. The executive of any affected local government must forward all comments and recommendations to the respective Governor before submitting them to the Regional Supervisor.

(3) *The CZMA agency of each affected State.* The CZMA consistency review period under section 307(c)(3)(B)(ii) of the CZMA (16 U.S.C.1456(c)(3)(B)(ii)) and 15 CFR 930.78 begins when the States CZMA agency receives a copy of your deemed-submitted DPP or DOCD, consistency certification, and required necessary data/information (see 15 CFR 930.77(a)(1)).

(b) *General public.* Within 2 working days after the Regional Supervisor deems your DPP or DOCD submitted under § 250.266, the Regional Supervisor will make a public information copy of the DPP or DOCD and its accompanying information available for review to any appropriate interstate regional entity and the public at the appropriate MMS Regional Public Information Office. Any interested Federal agency or person may submit comments and recommendations to the Regional Supervisor. Comments and recommendations must be received by the Regional Supervisor within 60 calendar days after the DPP or DOCD including its accompanying information is made available.

(c) *MMS compliance review.* The Regional Supervisor will review the development and production activities in your proposed DPP or DOCD to ensure that they conform to the performance standards in § 250.202.

(d) *Amendments.* During the review of your proposed DPP or DOCD, the Regional Supervisor may require you, or you may elect, to change your DPP or DOCD. If you elect to amend your DPP or DOCD, the Regional Supervisor may determine that your DPP or DOCD, as amended, is subject to the requirements of § 250.266.

§ 250.268 How does MMS respond to recommendations?

(a) *Governor.* The Regional Supervisor will accept those recommendations from the Governor that provide a reasonable balance between the national interest and the well-being of the citizens of each affected State. The Regional Supervisor will explain in writing to the Governor the reasons for rejecting any of his or her recommendations.

(b) *Local governments and the public.* The Regional Supervisor may accept recommendations from the executive of any affected local government or the public.

(c) *Availability.* The Regional Supervisor will make all comments and recommendations available to the public upon request.

§ 250.269 How will MMS evaluate the environmental impacts of the DPP or DOCD?

The Regional Supervisor will evaluate the environmental impacts of the activities described in your proposed DPP or DOCD and prepare environmental documentation under the National Environmental Policy Act (NEPA) (42 U.S.C.4321 *et seq.*) and the implementing regulations (40 CFR parts 1500 through 1508).

(a) *Environmental impact statement (EIS) declaration.* At least once in each OCS planning area (other than the Western and Central GOM Planning Areas), the Director will declare that the approval of a proposed DPP is a major Federal action, and MMS will prepare an EIS.

(b) *Leases or units in the vicinity.* Before or immediately after the Director determines that preparation of an EIS is required, the Regional Supervisor may require lessees and operators of leases or units in the vicinity of the proposed development and production activities for which DPPs have not been approved to submit information about preliminary plans for their leases or units.

(c) *Draft EIS.* The Regional Supervisor will send copies of the draft EIS to the Governor of each affected State and to the executive of each affected local government who requests a copy. Additionally, when MMS prepares a DPP EIS, and the Federally-approved

CZMA program for an affected State requires a DPP NEPA document for use in determining consistency, the Regional Supervisor will forward a copy of the draft EIS to the State's CZMA agency. The Regional Supervisor will also make copies of the draft EIS available to any appropriate Federal agency, interstate regional entity, and the public.

§ 250.270 What decisions will MMS make on the DPP or DOCD and within what timeframe?

(a) *Timeframe.* The Regional Supervisor will act on your deemed-submitted DPP or DOCD as follows:

(1) The Regional Supervisor will make a decision within 60 calendar days after the latest of the day that:

(i) The comment period provided in § 267(a)(1), (a)(2), and (b) closes;

(ii) The final EIS for a DPP is released or adopted; or

(iii) The last amendment to your proposed DOCD is received by the Regional Supervisor.

(2) Notwithstanding paragraph (a)(1) of this section, MMS will not approve your DPP or DOCD until either:

(i) All affected States with approved CZMA programs concur, or have been conclusively presumed to concur, with your DPP or DOCD consistency certification under section 307(c)(3)(B)(i) and (ii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(i) and (ii)); or

(ii) The Secretary of Commerce has made a finding authorized by section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(iii)) that each activity described in the DPP or DOCD is consistent with the objectives of the CZMA, or is otherwise necessary in the interest of national security.

(b) *MMS decision.* By the deadline in paragraph (a) of this section, the Regional Supervisor will take one of the following actions:

The regional supervisor will . . .	If . . .	And then . . .
(1) Approve your DPP or DOCD.	It complies with all applicable requirements	The Regional Supervisor will notify you in writing of the decision and may require you to meet certain conditions, including those to provide monitoring information.
(2) Require you to modify your proposed DPP or DOCD.	It fails to make adequate provisions for safety, environmental protection, or conservation of natural resources or otherwise does not comply with the lease, the Act, the regulations prescribed under the Act, or other Federal laws.	The Regional Supervisor will notify you in writing of the decision and describe the modifications you must make to your proposed DPP or DOCD to ensure it complies with all applicable requirements.
(3) Disapprove your DPP or DOCD.	Any of the reasons in § 250.271 apply	(i) The Regional Supervisor will notify you in writing of the decision and describe the reason(s) for disapproving your DPP or DOCD; and (ii) MMS may cancel your lease and compensate you under 43 U.S.C. 1351(h)(2)(C) and the implementing regulations in §§ 250.183, 250.184, and 250.185 and 30 CFR 256.77.

§ 250.271 For what reasons will MMS disapprove the DPP or DOCD?

The Regional Supervisor will disapprove your proposed DPP or DOCD if one of the four reasons in this section applies:

(a) *Non-compliance.* The Regional Supervisor determines that you have failed to demonstrate that you can comply with the requirements of the Outer Continental Shelf Lands Act, as amended (Act), implementing regulations, or other applicable Federal laws.

(b) *No consistency concurrence.* (1) An affected State has not yet issued a final decision on your coastal zone consistency certification (see 15 CFR 930.78(a)); or

(2) An affected State objects to your coastal zone consistency certification, and the Secretary of Commerce, under section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(iii)), has not found that each activity described in the DPP or DOCD is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security.

(3) If the Regional Supervisor disapproved your DPP or DOCD for the sole reason that an affected State either has not yet issued a final decision on, or has objected to, your coastal zone consistency certification (see paragraphs (b)(1) and (2) in this section), the Regional Supervisor will approve your DPP or DOCD upon receipt of concurrence by the affected State, at the time concurrence of the affected State is conclusively presumed, or when the Secretary of Commerce makes a finding authorized by section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(iii)) that each activity described in your DPP or DOCD is consistent with the objectives of the CZMA, or is otherwise necessary in the interest of national security. In that event, you do not need to resubmit your DPP or DOCD for approval under § 250.273(b).

(c) *National security or defense conflicts.* Your proposed activities would threaten national security or defense.

(d) *Exceptional circumstances.* The Regional Supervisor determines because of exceptional geological conditions, exceptional resource values in the marine or coastal environment, or other exceptional circumstances that all of the following apply:

(1) Implementing your DPP or DOCD would cause serious harm or damage to life (including fish and other aquatic life), property, any mineral deposits (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment;

(2) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(3) The advantages of disapproving your DPP or DOCD outweigh the advantages of development and production.

§ 250.272 If a State objects to the DPP's or DOCD's coastal zone consistency certification, what can I do?

If an affected State objects to the coastal zone consistency certification accompanying your proposed or disapproved DPP or DOCD, you may do one of the following:

(a) *Amend or resubmit your DPP or DOCD.* Amend or resubmit your DPP or DOCD to accommodate the State's objection and submit the amendment or resubmittal to the Regional Supervisor for approval. The amendment or resubmittal needs to only address information related to the State's objections.

(b) *Appeal.* Appeal the State's objection to the Secretary of Commerce using the procedures in 15 CFR part 930, subpart H. The Secretary of Commerce will either:

(1) Grant your appeal by finding under section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C.1456(c)(3)(B)(iii)) that each activity described in detail in your DPP or DOCD is consistent with the objectives of the CZMA, or is otherwise necessary in the interest of national security; or

(2) Deny your appeal, in which case you may amend or resubmit your DPP or DOCD, as described in paragraph (a) of this section.

(c) *Withdraw your DPP or DOCD.* Withdraw your DPP or DOCD if you decide not to conduct your proposed development and production activities.

§ 250.273 How do I submit a modified DPP or DOCD or resubmit a disapproved DPP or DOCD?

(a) *Modified DPP or DOCD.* If the Regional Supervisor requires you to modify your proposed DPP or DOCD under § 250.270(b)(2), you must submit the modification(s) to the Regional Supervisor in the same manner as for a new DPP or DOCD. You need submit only information related to the proposed modification(s).

(b) *Resubmitted DPP or DOCD.* If the Regional Supervisor disapproves your DPP or DOCD under § 250.270(b)(3), and except as provided in § 250.271(b)(3), you may resubmit the disapproved DPP or DOCD if there is a change in the conditions that were the basis of its disapproval.

(c) *MMS review and timeframe.* The Regional Supervisor will use the performance standards in § 250.202 to either approve, require you to further modify, or disapprove your modified or resubmitted DPP or DOCD. The Regional Supervisor will make a decision within 60 calendar days after the Regional Supervisor deems your modified or resubmitted DPP or DOCD to be submitted, or receives the last amendment to your modified or resubmitted DPP or DOCD, whichever occurs later.

Post-Approval Requirements for the EP, DPP, and DOCD

§ 250.280 How must I conduct activities under the approved EP, DPP, or DOCD?

(a) *Compliance.* You must conduct all of your lease and unit activities according to your approved EP, DPP, or DOCD and any approval conditions. If you fail to comply with your approved EP, DPP, or DOCD:

(1) You may be subject to MMS enforcement action, including civil penalties; and

(2) The lease(s) involved in your EP, DPP, or DOCD may be forfeited or cancelled under 43 U.S.C. 1334(c) or (d). If this happens, you will not be entitled to compensation under § 250.185(b) and 30 CFR 256.77.

(b) *Emergencies.* Nothing in this subpart or in your approved EP, DPP, or DOCD relieves you of, or limits your responsibility to take appropriate measures to meet emergency situations. In an emergency situation, the Regional Supervisor may approve or require departures from your approved EP, DPP, or DOCD.

§ 250.281 What must I do to conduct activities under the approved EP, DPP, or DOCD?

(a) *Approvals and permits.* Before you conduct activities under your approved EP, DPP, or DOCD you must obtain the following approvals and or permits, as applicable, from the District Manager or Regional Supervisor:

(1) Approval of applications for permits to drill (APDs) (see § 250.410);

(2) Approval of production safety systems (see § 250.800);

(3) Approval of new platforms and other structures (or major modifications to platforms and other structures) (see § 250.901);

(4) Approval of applications to install lease term pipelines (see § 250.1007); and

(5) Other permits, as required by applicable law.

(b) *Conformance.* The activities proposed in these applications and permits must conform to the activities described in detail in your approved EP, DPP, or DOCD.

(c) *Separate State CZMA consistency review.* APDs, and other applications for licenses, approvals, or permits to conduct activities under your approved EP, DPP, or DOCD including those identified in paragraph (a) of this section, are not subject to separate State CZMA consistency review.

(d) *Approval restrictions for permits for activities conducted under EPs.* The District Manager or Regional Supervisor will not approve any APDs or other applications for licenses, approvals, or permits under your approved EP until either:

(1) All affected States with approved coastal zone management programs concur, or are conclusively presumed to concur, with the coastal zone consistency certification accompanying your EP under section 307(c)(3)(B)(i) and (ii) of the CZMA (16 U.S.C. 1456(c)(3)(B)(i) and (ii)); or

(2) The Secretary of Commerce finds, under section 307(c)(3)(B)(iii) of the CZMA (16 U.S.C.1456(c)(3)(B)(iii)) that each activity covered by the EP is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security;

(3) If an affected State objects to the coastal zone consistency certification accompanying your approved EP after MMS has approved your EP, you may either:

(i) Revise your EP to accommodate the State's objection and submit the revision to the Regional Supervisor for approval; or

(ii) Appeal the State's objection to the Secretary of Commerce using the procedures in 15 CFR part 930 subpart H. The Secretary of Commerce will either:

(A) Grant your appeal by making the finding described in paragraph (d)(2) of this section; or

(B) Deny your appeal, in which case you may revise your EP as described in paragraph (d)(3)(i) of this section.

§ 250.282 Do I have to conduct post-approval monitoring?

After approving your EP, DPP, or DOCD the Regional Supervisor may direct you to conduct monitoring programs. You must retain copies of all monitoring data obtained or derived from your monitoring programs and make them available to MMS upon request. The timeframe for retention of all monitoring data will be stipulated in the approval letter. The Regional Supervisor may require you to:

(a) *Monitoring plans.* Submit monitoring plans for approval before you begin the work; and

(b) *Monitoring reports.* Prepare and submit reports that summarize and analyze data and information obtained or derived from your monitoring programs. The Regional Supervisor will specify requirements for preparing and submitting these reports.

§ 250.283 When must I revise or supplement the approved EP, DPP, or DOCD?

(a) *Revised OCS plans.* You must revise your approved EP, DPP, or DOCD when you propose to:

(1) Change the type of drilling rig (*e.g.*, jack-up, platform rig, barge, submersible, semisubmersible, or drillship), production facility (*e.g.*, caisson, fixed platform with piles, tension leg platform), or transportation mode (*e.g.*, pipeline, barge);

(2) Change the surface location of a well or production platform by a distance more than that specified by the Regional Supervisor;

(3) Change the type of production or significantly increase the volume of production or storage capacity;

(4) Increase the emissions of an air pollutant to an amount that exceeds the amount specified in your approved EP, DPP, or DOCD;

(5) Significantly increase the amount of solid or liquid wastes to be handled or discharged;

(6) Request a new H2S area classification, or increase the concentration of H2S to a concentration greater than that specified by the Regional Supervisor;

(7) Change the location of your onshore support base either from one State to another or to a new base or a base requiring expansion; or

(8) Change any other activity specified by the Regional Supervisor.

(b) *Supplemental OCS plans.* You must supplement your approved EP, DPP, or DOCD when you propose to conduct activities on your lease(s) or unit that require approval of a license or permit which is not described in your approved EP, DPP, or DOCD. These types of changes are called supplemental OCS plans.

§ 250.284 How will MMS require revisions to the approved EP, DPP, or DOCD?

(a) *Periodic review.* The Regional Supervisor will periodically review the activities you conduct under your approved EP, DPP, or DOCD and may require you to submit updated information on your activities. The frequency and extent of this review will be based on the significance of any changes in available information and onshore or offshore conditions affecting, or affected by, the activities in your approved EP, DPP, or DOCD.

(b) *Results of review.* The Regional Supervisor may require you to revise your approved EP, DPP, or DOCD based on this review. In such cases, the Regional Supervisor will inform you of the reasons for the decision.

§ 250.285 How do I submit revised and supplemental EPs, DPPs, and DOCDs?

(a) *Submittal.* You must submit to the Regional Supervisor any revisions and supplements to approved EPs, DPPs, or DOCDs for approval, whether you initiate them or the Regional Supervisor orders them.

(b) *Information.* Revised and supplemental EPs, DPPs, and DOCDs need include only information related to or affected by the proposed changes, including information on changes in expected environmental impacts.

(c) *Procedures.* All supplemental EPs, DPPs, and DOCDs, and those revised EPs, DPPs, and DOCDs that the Regional Supervisor determines are likely to result in a significant change in the impacts previously identified and evaluated, are subject to all of the procedures under § 250.231 through § 250.235 for EPs and § 250.266 through § 250.274 for DPPs and DOCDs.

Deepwater Operations Plans (DWOP)

§ 250.286 What is a DWOP?

(a) A DWOP is a plan that provides sufficient information for MMS to review a deepwater development project, and any other project that uses non-conventional production or completion technology, from a total system approach. The DWOP does not replace, but supplements other submittals required by the regulations such as Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents. MMS will use the information in your DWOP to determine whether the project will be developed in an acceptable manner, particularly with respect to operational safety and environmental protection issues involved with non-conventional production or completion technology.

(b) The DWOP process consists of two parts: a Conceptual Plan and the DWOP. Section 250.289 prescribes what the Conceptual Plan must contain, and § 250.292 prescribes what the DWOP must contain.

§ 250.287 For what development projects must I submit a DWOP?

You must submit a DWOP for each development project in which you will use non-conventional production or completion technology, regardless of water depth. If you are unsure whether MMS considers the technology of your project non-conventional, you must contact the Regional Supervisor for guidance.

§ 250.288 When and how must I submit the Conceptual Plan?

You must submit four copies, or one hard copy and one electronic version, of the Conceptual Plan to the Regional Director after you have decided on the general concept(s) for development and before you begin engineering design of the well safety control system or subsea production systems to be used after well completion.

§ 250.289 What must the Conceptual Plan contain?

In the Conceptual Plan, you must explain the general design basis and philosophy that you will use to develop the field. You must include the following information:

(a) An overview of the development concept(s);

(b) A well location plat;

(c) The system control type (*i.e.*, direct hydraulic or electro-hydraulic); and

(d) The distance from each of the wells to the host platform.

§ 250.290 What operations require approval of the Conceptual Plan?

You may not complete any production well or install the subsea wellhead and well safety control system (often called the tree) before MMS has approved the Conceptual Plan.

§ 250.291 When and how must I submit the DWOP?

You must submit four copies, or one hard copy and one electronic version, of the DWOP to the Regional Director after you have substantially completed safety system design and before you begin to procure or fabricate the safety and operational systems (other than the tree), production platforms, pipelines, or other parts of the production system.

§ 250.292 What must the DWOP contain?

You must include the following information in your DWOP:

(a) A description and schematic of the typical wellbore, casing, and completion;

(b) Structural design, fabrication, and installation information for each surface system, including host facilities;

(c) Design, fabrication, and installation information on the mooring systems for each surface system;

(d) Information on any active stationkeeping system(s) involving thrusters or other means of propulsion used with a surface system;

(e) Information concerning the drilling and completion systems;

(f) Design and fabrication information for each riser system (*e.g.*, drilling, workover, production, and injection);

(g) Pipeline information;

(h) Information about the design, fabrication, and operation of an offtake system for transferring produced hydrocarbons to a transport vessel;

(i) Information about subsea wells and associated systems that constitute all or part of a single project development covered by the DWOP;

(j) Flow schematics and Safety Analysis Function Evaluation (SAFE) charts (API RP 14C, subsection 4.3c, incorporated by reference in § 250.198) of the production system from the Surface Controlled Subsurface Safety Valve (SCSSV) downstream to the first item of separation equipment;

(k) A description of the surface/subsea safety system and emergency support

systems to include a table that depicts what valves will close, at what times, and for what events or reasons;

(l) A general description of the operating procedures, including a table summarizing the curtailment of production and offloading based on operational considerations;

(m) A description of the facility installation and commissioning procedure;

(n) A discussion of any new technology that affects hydrocarbon recovery systems; and

(o) A list of any alternate compliance procedures or departures for which you anticipate requesting approval.

§ 250.293 What operations require approval of the DWOP?

You may not begin production until MMS approves your DWOP.

§ 250.294 May I combine the Conceptual Plan and the DWOP?

If your development project meets the following criteria, you may submit a combined Conceptual Plan/DWOP on or before the deadline for submitting the Conceptual Plan.

(a) The project is located in water depths of less than 400 meters (1,312 feet); and

(b) The project is similar to projects involving non-conventional production or completion technology for which you have obtained approval previously.

§ 250.295 When must I revise my DWOP?

You must revise either the Conceptual Plan or your DWOP to reflect changes in your development project that materially alter the facilities, equipment, and systems described in your plan. You must submit the revision within 60 days after any material change to the information required for that part of your plan.

Conservation Information Documents (CID)

§ 250.296 When and how must I submit a CID or a revision to a CID?

(a) You must submit one original and two copies of a CID to the appropriate OCS Region at the same time you first submit your DOCD or DPP for any development of a lease or leases located in water depths greater than 400 meters (1,312 feet). You must also submit a CID for a Supplemental DOCD or DPP when requested by the Regional Supervisor.

(b) If you decide not to develop a reservoir you committed to develop in your CID, you must submit one original and two copies of a revision to the CID to the appropriate OCS Region. The revision to the CID must be submitted within 14 calendar days after making your decision not to develop the reservoir and before the reservoir is bypassed. The Regional Supervisor will approve or disapprove any such revision to the original CID. If the Regional Supervisor disapproves the revision, you must develop the reservoir as described in the original CID.

§ 250.297 What information must a CID contain?

(a) You must base the CID on wells drilled before your CID submittal, that define the extent of the reservoirs. You must notify MMS of any well that is drilled to total depth during the CID evaluation period and you may be required to update your CID.

(b) You must include all of the following information if available. Information must be provided for each hydrocarbon-bearing reservoir that is penetrated by a well that would meet the producibility requirements of § 250.115 or § 250.116:

(1) General discussion of the overall development of the reservoir;

(2) Summary spreadsheets of well log data and reservoir parameters (*i.e.*, sand tops and bases, fluid contacts, net pay, porosity, water saturations, pressures, formation volume factor);

(3) Appropriate well logs, including digital well log (*i.e.*, gamma ray, resistivity, neutron, density, sonic, caliper curves) curves in an acceptable digital format;

(4) Sidewall core/whole core and pressure-volume-temperature analysis;

(5) Structure maps, with the existing and proposed penetration points and subsea depths for all wells penetrating the reservoirs, fluid contacts (or the lowest or highest known levels in the absence of actual contacts), reservoir boundaries, and the scale of the map;

(6) Interpreted structural cross sections and corresponding interpreted seismic lines or block diagrams, as necessary, that include all current wellbores and planned wellbores on the leases or units to be developed, the reservoir boundaries, fluid contacts, depth scale, stratigraphic positions, and relative biostratigraphic ages;

(7) Isopach maps of each reservoir showing the net feet of pay for each well within the reservoir identified at the penetration point, along with the well name, labeled contours, and scale;

(8) Estimates of original oil and gas in-place and anticipated recoverable oil and gas reserves, all reservoir parameters, and risk factors and assumptions;

(9) Plat map at the same scale as the structure maps with existing and proposed well paths, as well as existing and proposed penetrations;

(10) Wellbore schematics indicating proposed perforations;

(11) Proposed wellbore utility chart showing all existing and proposed wells, with proposed completion intervals indicated for each borehole;

(12) Appropriate pressure data, specified by date, and whether estimated or measured;

(13) Description of reservoir development strategies;

(14) Description of the enhanced recovery practices you will use or, if you do not plan to use such practices, an explanation of the methods you considered and reasons you do not intend to use them;

(15) For each reservoir you do not intend to develop:

(i) A statement explaining the reason(s) you will not develop the reservoir, and

(ii) Economic justification, including costs, recoverable reserve estimate, production profiles, and pricing assumptions; and

(16) Any other appropriate data you used in performing your reservoir evaluations and preparing your reservoir development strategies.

§ 250.298 How long will MMS take to evaluate and make a decision on the CID?

(a) The Regional Supervisor will make a decision within 150 calendar days of receiving your CID. If MMS does not act within 150 calendar days, your CID is considered approved.

(b) MMS may suspend the 150-calendar-day evaluation period if there is missing, inconclusive, or inaccurate data, or when a well reaches total depth during the evaluation period. MMS may also suspend the evaluation period when a well penetrating a hydrocarbon-bearing structure reaches total depth during the evaluation period and the data from that well is needed for the CID. You will receive written notification from the Regional Supervisor describing the additional information that is needed, and the evaluation period will resume once MMS receives the requested information.

(c) The Regional Supervisor will approve or deny your CID request based on your commitment to develop economically producible reservoirs according to sound conservation, engineering, and economic practices.

§ 250.299 What operations require approval of the CID?

You may not begin production before you receive MMS approval of the CID.

§ 250.303 [Amended]

■ 6. Section 250.303 is amended as follows:

■ a. In paragraph (b)(2), the citation ''250.203(b)(19)'' is revised to read ''250.218''.

■ b. In paragraph (b)(2), the citation ''250.204(b)(12)'' is revised to read ''250.249''.

■ c. In paragraph (d), the citation ''250.204(b)(12)(i)(A)'' is revised to read ''250.218(a)''.

■ d. In paragraph (d), the citation ''250.203(b)(19)(i)(A)'' is revised to read ''250.249(a)''.

§ 250.304 [Amended]

■ 7. Section 250.304 is amended as follows:

■ a. In paragraph (a)(6), the citation ''250.203(b)(19)'' is revised to read ''250.218''.

■ b. In paragraph (a)(6), the citation ''250.204(b)(12)'' is revised to read ''250.249''.

■ c. In paragraph (b), the citation ''250.203(b)(19)(i)(A)'' is revised to read ''250.218(a)''.

■ d. In paragraph (b), the citation ''250.204(b)(12)(i)(A)'' is revised to read ''250.249(a)''.

§ 250.1605 [Amended]

■ 8. Section 250.1605 is amended as follows:

■ a. In paragraph (d), the citation ''250.203'' is revised to read ''250.211 through 250.228''.

■ b. In paragraph (d), the citation ''250.204'' is revised to read ''250.241 through 250.262''.

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

■ 9. The authority citation for Part 282 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 282.28 [Amended]

■ 10. Section 282.28 is amended as follows:

■ a. In paragraph (a), the citation ''250.203(b)(19)'' is revised to read ''250.218''.

■ b. In paragraph (a), the citation ''250.204(b)(12)'' is revised to read ''250.249''.

[FR Doc. 05–16764 Filed 8–29–05; 8:45 am]

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Federal Register

Tuesday,
August 30, 2005

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2005–06 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations.

DATES: This rule takes effect on August 30, 2005.

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2005

On April 6, 2005, we published in the **Federal Register** (70 FR 17574) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2005–06 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 24, 2005, we published in the **Federal Register** (70 FR 36794) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2005–06 duck hunting season. The June 24 supplement also provided detailed information on the 2005–06 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 22 and 23, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2005–06 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2005–06 regular waterfowl seasons. On August 1, we published in the **Federal Register** (70 FR 44200) a third document specifically dealing with the proposed frameworks for early-season regulations, and on August 22, we published in the **Federal Register** (70 FR 49068) a fourth document specifically dealing with the proposed frameworks for late-season regulations.

This document is the fifth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2005–06 season. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the April 6 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. We have considered all pertinent comments received. Comments are summarized below and numbered in the order used in the April 6 **Federal Register**. We have included only the numbered items pertaining to early-season issues for which we received comments. Consequently, the issues do not follow in successive numerical or alphabetical order. We received recommendations from all Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the Councils' annual review of the frameworks, we assume Council support for continuation of last year's frameworks for items for which we received no recommendation. Council recommendations for changes are summarized below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussions, and only those containing substantial recommendations are discussed below.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Connecticut's September goose season framework dates of 1 September to 30 September become operational.

The Central Flyway Council recommended that Oklahoma's Experimental September Canada Goose Hunting Season become operational for the time period September 16–25, beginning with the September 2005 hunting season.

The Pacific Flyway Council recommended extending Idaho's geographically limited September season framework to a Statewide framework.

Service Response: We concur with the recommendations regarding Connecticut's and Idaho's September goose seasons. We do not support the Central Flyway Council recommendation to give operational status to the experimental season in Oklahoma. The sample size of tail fans necessary to determine the portion of migrant Canada geese in the harvest is insufficient for the experimental period. We believe that the experimental season should be extended for 1 year and we will work with Oklahoma to complete collections required for this assessment.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese be September 16 in 2005 and future years. If this recommendation is not approved, the Committees recommended that the framework opening date for all species of geese for

the regular goose seasons in Michigan and Wisconsin be September 16.

Service Response: We concur with the objective to increase harvest pressure on resident Canada geese in the Mississippi Flyway, but do not concur with a September 16 framework opening date throughout the Flyway. A September 16 opening date Flyway-wide would require establishing the regular season during the early-season regulations process, which presents a number of administrative problems and has implications beyond the Mississippi Flyway. Regarding the recommendations for a September 16 framework opening date in Wisconsin and Michigan, we concur. However, the opening dates in both States will continue to be considered exceptions to the general Flyway opening date, to be reconsidered annually.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended using the 2005 Rocky Mountain Population sandhill crane harvest allocation of 906 birds as proposed in the allocation formula using the 2002–2004 3-year running average. In addition, the Council recommended no changes in the Mid-continent Population sandhill crane hunting frameworks.

Service Response: As we indicated in the April 6 **Federal Register**, during last year's waterfowl and sandhill crane hunting season, a group of hunters in Kansas accidentally shot at some whooping cranes. Two of the whooping cranes from this flock sustained injuries and were subsequently captured and treated by agency and university personnel. Both subsequently died after capture. We have worked with staff from the Kansas Department of Wildlife and Parks to review this incident, and we concur with the Central Flyway Council recommendation for no change to the Mid-Continent Sandhill Crane Population hunting season frameworks. The State of Kansas has indicated that they will increase and improve hunter outreach and education efforts concerning whooping cranes in cooperation with the Service and will delay the opening of the sandhill crane season through State regulations. We believe these actions will minimize the potential conflicts with whooping cranes and hunting in this area.

12. Rails

Written Comments: An individual expressed concern over the status of several rail species and subspecies, particularly clapper rails in Florida, and believed that since many States have closed rail hunting that the Service should take similar action.

Service Response: Historically, monitoring of rail populations is difficult due to their inconspicuous behavior and dense habitats that they occupy. A recent status assessment of king rails in the Mississippi Flyway indicated that loss of wetland habitat is responsible for the perceived declines in king rails, and we believe habitat declines are responsible for declines in other species. There is no evidence that hunting mortality is responsible for such declines. Recent estimates of rail harvest from the Harvest Information Program indicate that total rail harvest in Florida was only 1,200 birds in 2003 and 4,900 birds in 2004 (report available at *http://migratorybirds.fws.gov/reports*). Further, clapper rail harvest accounts for only 50% of the total rail harvest in the Atlantic Flyway; therefore, we believe harvest of this species in Florida is low. We promulgate hunting season frameworks (*i.e.* season length, bag limits) for rails, within which States can choose their own seasons. As always, States may be more restrictive than Federal frameworks, including closures.

16. Mourning Doves

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that zoning remain an option for States in their management of mourning dove harvest. The Committees recommend the following elements should be noted or made part of any change in zoning policy by the Service:

1. There is no strong biological basis to establish a latitudinal line below which zoning is mandatory in the Eastern Management Unit;

2. Use of September 20th as the earliest opening date for a South Zone has no biological basis; and

3. Limiting the frequency that a State can select or change zoning options is supported, but the time period between changes should not exceed 5 years and States selecting Zoning should be able to revert back to a non-zoning option for any remaining years left before Zoning is again a regulatory option.

The Central Flyway Council recommends the following guidelines for mourning dove hunting zones and periods in the Central Management Unit (CMU).

1. The time interval between changes in zone boundaries or periods within States in the CMU should not exceed five (5) years consistent with the review schedule for duck zones and periods (*i.e.*, 2006–2010, 2011–2015, etc).

2. States may select two (2) zones and three (3) segments except Texas has the option to select three (3) zones and two (2) segments.

3. The opening date of September 20 in the South Zone in Texas with the three (3) zone option will remain unchanged.

Service Response: We will defer the decision on dove zoning for 1 year, and will work with the Flyway Councils and Dove technical committees to develop a consensus position on dove zoning by March 2006.

17. White-Winged and White-Tipped Doves

Council Recommendations: The Central Flyway Council recommended that the boundary for the White-winged Dove Area in Texas be extended to include the area south and west of Interstate Highway 37 and U.S. Highway 90, with an aggregate daily bag limit of 12 doves, no more than 3 of which may be mourning doves. All other regulations would remain unchanged. The Council subsequently modified its recommendation to reduce the expansion to that area south and west of Interstate Highway 35 and U.S. Highway 90, with an aggregate daily bag limit of 12 doves, no more than 4 of which may be mourning doves and 2 of which may be white-tipped doves.

Service Response: We concur with the modified Council recommendation to expand the Special White-winged Dove Area to I–35 and U.S. 90 and allow an aggregate daily bag limit of 12 doves, of which no more than 4 may be mourning doves and 2 may be white-tipped doves. However, we are concerned about the potential increased take of mourning doves and will monitor the effects of this change. Further, we appreciate Texas' willingness to work with the Service to establish those surveys or studies that are needed and feasible to determine the effects of this expanded hunting area on mourning doves. Specifically, we are hopeful that the proposed comprehensive harvest surveys along with implementation of extensive nesting and banding studies will provide data that will help make future decisions.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended that the Canvasback Harvest Strategy include a statement to the effect that ''In general, Alaska may annually select a canvasback season with limits of one daily, three in possession in lieu of annual prescriptions from this strategy. In the event that the breeding population declines to a level that

indicates seasons will be closed for several years, the Service will consult with the Pacific Flyway Council to decide whether Alaska seasons should be closed.'' The Council and Service should appreciate that if season closure decisions are made during the late season process, Alaska will have to implement regulation changes by emergency orders, which will conflict with widely distributed public regulations summaries produced in July. Further, the Council recommended removal of the [Canada] goose closure in the Aleutian Islands (Unit 10), reduction of dark goose limits in Units 18 and 9(E) to four daily with no more than two cackling/Canada geese, and reduction in the brant season length in Unit 9(D) from 107 days to 30 days. The Council's latter two recommendations are contingent on concomitant restrictions on primary migration and wintering areas in the lower 48 states.

Service Response: We concur with the Council's recommendations. Further, we support the recommendation for the additional language to be added to the existing canvasback strategy describing the season closure process for the State of Alaska. However, we request that the Pacific Flyway Council continue to work with the Service to define what objective measures might be used to more clearly describe when canvasbacks would be closed in Alaska.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES**. Further, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new Supplemental Environmental Impact Statement for the migratory bird hunting program. We plan to begin the public scoping process this year.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov.*

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because it establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Survey and assigned clearance number 1018–0023 (expires 11/30/2007). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of the harvest, and the portion it constitutes of the total population. A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

In promulgating this rule, we have determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication. Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season selections from these officials, we will publish a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2005–06 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2005–06 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 11, 2005.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2005–06 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select hunting seasons for certain migratory game birds between September 1, 2005, and March 10, 2006.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units:

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and (to be determined) in the Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 17). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as ''Youth Waterfowl Hunting Days,'' in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate, of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 30 days during September 1–30 may be selected for Connecticut, the Northeast Hunt Unit of North Carolina, New Jersey, and Rhode Island. Except for experimental seasons described below, seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 8 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 25 days during September 1–25

may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Experimental seasons of up to 30 days during September 1–30 may be selected by Florida, Georgia, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 8 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 5 Canada geese.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

A Canada goose season of up to 15 consecutive days during September 16–30 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

Experimental Seasons

An experimental Canada goose season of up to 9 consecutive days during September 22–30 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 15 consecutive days during September 16–30 may be selected by Nebraska. The daily bag limit may not exceed 5 Canada geese.

Pacific Flyway

General Seasons

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season during the period September 1–15. The daily bag limit is 2 and the possession limit is 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. A daily bag limit of 2, with season and possession limits of 4, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways: Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, monitoring the racial composition of the harvest must be conducted at 3 year intervals;

3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 22) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits: Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 24) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit. Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, and Louisiana may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit. Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12 mourning and white-winged doves in the aggregate, or not more than 60 days with a bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit. Hunting Seasons and Daily Bag Limits: Idaho, Oregon, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Utah—Not more than 30 consecutive days with a daily bag limit that may not exceed 10 mourning doves and white-winged doves in the aggregate.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties, where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits: Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit: In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the remainder of the Eastern Management Unit, the season is closed.

Central Management Unit: In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit: Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Utah, the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of 5 zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits: Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

3. In Units 9(E) and 18, the limit for dark geese is 4 daily, including no more than 2 Canada geese.

4. In Unit 9, season length for brant is 30 days.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, no more than 200 permits may be issued during this operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 15 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits: Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio; then south, east, and north along Loop 1604 to Interstate Highway 10 east of San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to State Loop 1604 west of San Antonio, southeast on State Loop 1604 to Interstate Highway 35, southwest on Interstate Highway 35 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 104, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington Counties; that portion of Bertie County north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor to the Hertford County line; and that portion of Northampton County that is north of U.S. 158 and east of NC 35.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone. Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; thence south and east along County Road E2W to Highway 920; thence north along Highway 920 to County Road E16; thence east along County Road E16 to County Road W58; thence south along County Road W58 to County Road E34; thence east along County Road E34 to Highway 13; thence south along Highway 13 to Highway 30; thence east along Highway 30 to Highway 1; thence south along Highway 1 to Morse Road in Johnson County; thence east along Morse Road to Wapsi Avenue; thence south along Wapsi Avenue to Lower West Branch Road; thence west along Lower West Branch Road to Taft Avenue; thence south along Taft Avenue to County Road F62; thence west along County Road F62 to Kansas Avenue; thence north along Kansas Avenue to Black Diamond Road; thence west on Black Diamond Road to Jasper Avenue; thence north along Jasper Avenue to Rohert Road; thence west along Rohert Road to Ivy Avenue; thence north along Ivy Avenue to 340th Street; thence west along 340th Street to Half Moon Avenue; thence north along Half Moon Avenue to Highway 6; thence west along Highway 6 to Echo Avenue; thence north along Echo Avenue to 250th Street; thence east on 250th Street to Green Castle Avenue; thence north along Green Castle Avenue to County Road F12; thence west along County Road F12 to County Road W30; thence north along County Road W30 to Highway 151; thence north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone. Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; thence south along R38 to Northwest 142nd Avenue; thence east along Northwest 142nd Avenue to Northeast 126th Avenue; thence east along Northeast 126th Avenue to Northeast 46th Street; thence south along Northeast 46th Street to Highway 931; thence east along Highway 931 to Northeast 80th Street; thence south along Northeast 80th Street

to Southeast 6th Avenue; thence west along Southeast 6th Avenue to Highway 65; thence south and west along Highway 65 to Highway 69 in Warren County; thence south along Highway 69 to County Road G24; thence west along County Road G24 to Highway 28; thence southwest along Highway 28 to 43rd Avenue; thence north along 43rd Avenue to Ford Street; thence west along Ford Street to Filmore Street; thence west along Filmore Street to 10th Avenue; thence south along 10th Avenue to 155th Street in Madison County; thence west along 155th Street to Cumming Road; thence north along Cumming Road to Badger Creek Avenue; thence north along Badger Creek Avenue to County Road F90 in Dallas County; thence east along County Road F90 to County Road R22; thence north along County Road R22 to Highway 44; thence east along Highway 44 to County Road R30; thence north along County Road R30 to County Road F31; thence east along County Road F31 to Highway 17; thence north along Highway 17 to Highway 415 in Polk County; thence east along Highway 415 to Northwest 158th Avenue; thence east along Northwest 158th Avenue to the point of beginning.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west

and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Kansas City/Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on KS 68 to its junction with KS 33, then north on KS 33 to its junction with U.S. 56, then west on U.S. 56 to its junction with KS 31, then west-northwest on KS 31 to its junction with KS 99, then north on KS 99 to its junction with U.S. 24, then east on U.S. 24 to its junction with KS 63, then north on KS 63 to its junction with KS 16, then east on KS 16 to its junction with KS 116, then east on KS 116 to its junction with U.S. 59, then northeast on U.S. 59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with KS 68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on U.S. 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with KS 96, then east on KS 96 to its junction with KS 296, then south on KS 296 to its junction with 247 Street West, then south on 247 Street West to its junction with U.S. 54, then west on U.S. 54 to its junction with 263 Street West, then south on 263 Street West to its junction with KS 49, then south on KS 49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS 55, then east on KS 55 to its junction with KS 15, then east on KS 15 to its junction with U.S. 77, then north on U.S. 77 to its junction with Ohio Street, then north on Ohio to its junction with KS 254, then east on KS 254 to its junction with KS 196, then northwest on KS 196 to its junction with I–135, then north on I–135 to its junction with U.S. 50.

Nebraska

September Canada Goose Unit—That part of Nebraska bounded by a line from the Nebraska-Iowa State line west on U.S. Highway 30 to U.S. Highway 81, then south on U.S. Highway 81 to NE Highway 64, then east on NE Highway 64 to NE Highway 15, then south on NE Highway 15 to NE Highway 41, then east on NE Highway 41 to NE Highway 50, then north on NE Highway 50 to NE Highway 2, then east on NE Highway 2 to the Nebraska-Iowa State line.

South Dakota

September Canada Goose Unit A—Brown, Campbell, Edmunds, Faulk, McPherson, Spink, and Walworth Counties.

September Canada Goose Unit B—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

September Canada Goose Unit C—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties.

September Canada Goose Unit D—Union County.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone)—Pacific and Grays Harbor Counties.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

MVP—Upper Peninsula Zone: The MVP—Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP—Lower Peninsula Zone: The MVP—Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then east to the southwest corner of Eaton county, then north to the southern border of Ionia county, then east to the southwest corner of Clinton county, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm counties to the southern border of Isabella county, then east to the southwest corner of Midland county, then north along the west Midland county border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Sandhill Cranes

Central Flyway

Colorado

The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

Montana

The Central Flyway portion of the State except for that area south and west of Interstate 90, which is closed to sandhill crane hunting.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

Oklahoma

That portion of the State west of I–35.

South Dakota

That portion of the State west of U.S. 281.

Texas

Area 1—That portion of the State west of a line beginning at the International Bridge at Laredo, north along I–35 to the Oklahoma border.

Area 2—That portion of the State east and south of a line from the International Bridge at Laredo northerly along I–35 to U.S. 290; southeasterly along U.S. 290 to I–45; south and east on I–45 to State Highway 87, south and east on TX 87 to the channel in the Gulf of Mexico between Galveston and Point Bolivar; EXCEPT: That portion of the State lying within the area bounded by the Corpus Christi Bay Causeway on U.S. 181 at Portland; north and west on U.S. 181 to U.S. 77 at Sinton; north and east along U.S. 77 to U.S. 87 at Victoria; east and south along U.S. 87 to Texas Highway 35; north and east on TX 35 to the west end of the Lavaca Bay Bridge; then south and east along the west shoreline of Lavaca Bay and Matagorda Island to the Gulf of Mexico; then south and west along the shoreline of the Gulf of Mexico to the Corpus Christi Bay Causeway.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. 05–17234 Filed 8–29–05; 8:45 am]

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Federal Register

Tuesday,
August 30, 2005

Part V

Department of Housing and Urban Development

Certain Multifamily Mortgage Insurance Premiums, Changes; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4679–N–10; HUD–2005–0018]

Changes in Certain Multifamily Mortgage Insurance Premiums

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with HUD regulations, this notice announces the changes of the mortgage insurance premiums (MIP) for the following Federal Housing Administration (FHA) multifamily mortgage insurance programs whose commitments will be issued or reissued in Fiscal Year (FY) 2006:

- All sections of the National Housing Act where the mortgagor equity is produced from the proceeds of the sale of low-income housing tax credits (LIHTC): The MIP is reduced to 45 basis points.
- Section 207/223(f) refinance or purchase of apartments: The MIP is reduced to 45 basis points.
- Section 223(a)(7) refinance of FHA insured apartment mortgages: The MIP is reduced to 45 basis points.

Under the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235 (approved December 15, 1989) and HUD's implementing instructions, a sponsor is required to submit a certification regarding governmental assistance, including any low-income housing tax credits, with all mortgage insurance applications.

DATES: *Comment Due Date:* September 29, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *www.regulations.gov*; or
- The HUD electronic website at: *www.epa.gov/feddocket*. Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Copies are also available for inspection and downloading at *www.epa.gov/feddocket*.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, (202) 708–1142 (this is not a toll-free number). Hearing- or speech-impaired individuals may access these numbers through TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

Introduction

HUD's regulations at 24 CFR 207.252, 207.252a, and 207.254 provide that instead of setting the MIP at one specific rate for all programs, the Secretary is permitted to change an MIP program by program within the full range of HUD's statutory authority of one fourth of one percent to one percent of the outstanding mortgage principal per annum through a notice, as provided in section 203(c)(1) of the National Housing Act (the Act) (12 U.S.C. 1709(c)(1)). The rule states that HUD will provide a 30-day period for public comment on notices changing MIPs in multifamily insured housing programs.

Pursuant to this comment procedure, this notice announces changes from FY 2005 in the MIP for programs authorized under the National Housing Act. The effective date for these changes is proposed to be October 1, 2005.

The MIP rate is to be changed to 45 basis points for the following programs where the mortgagor's equity is being produced from the proceeds of the sale of Low Income Housing Tax Credits (LIHTCs): sections 221(d)(4), 221(d)(3), 207, 220, 231, 232, 241(a). Section 207/223(f) refinance or purchase of apartments will be lowered from 50 to 45 basis points; and section 223(a)(7) refinance of FHA insured apartment mortgages has been lowered from 50 to 45 basis points. The MIP rate for section 232 new construction or substantial rehabilitation of Health Care Facilities and section 241(a) Health Care Improvements and Additions will remain unchanged at 57 basis points. The MIP rate for sections 207, 213, 220, 231 without LIHTC, and 234(d), 242 and Title XI of the National Housing Act will remain unchanged at 50 basis points. The MIP rate for Refinancing of Health Care Facilities under section 232/223(a)(7) and 232/223(f) will remain at 50 basis points. The MIP rate for the following programs without low-income housing tax credits will also remain at 80 basis points: section 221(d)(3) for Nonprofit and Cooperatives for New Construction or Rehabilitation, section 223(d) for Operating Loss Loans for apartments and health care facilities, and section 241(a) for improvements and additions for apartments.

Loans under section 221(d)(3) without LIHTC, section 241(a) for supplemental loans for additions or improvements to existing apartments without LIHTC, and section 223(d) for operating loss loans will require a credit subsidy obligation in fiscal year 2006. Only nonprofit and nonprofit cooperative mortgagors can obtain a 100 percent mortgage under section 221(d)(3). The nonprofits cannot be under the control or influence of profit-motivated entities and continue to require a HUD Headquarters approval prior to issuance of the firm commitment.

Premiums for risk sharing applications under sections 542(b) and 542(c) of the Housing and Community Development Act of 1992 will be reduced from 50 basis points to 45 basis points for those projects where low-income housing tax credits are part of the project financing. This will require a revision to the section 542(c) regulations at 24 CFR 266.604 and renegotiation of section 542(b) agreements. Until the regulation change is effective and the section 542(b) agreements are modified, risk sharing premiums remain at 50 basis points for risk sharing projects with or without low-income housing tax credits.

The mortgage insurance premiums to be in effect for FHA firm commitments issued, amended, or reissued in FY 2006 are shown in the table below:

FISCAL YEAR 2006 MIP RATES

[Multifamily Loan program]

Loan program	Basis points
207 Multifamily Housing NC/SR	50
207 Multifamily Housing NC/SR with LIHTC	45
207 Manufactured Home Parks	50
207 Manufactured Home Parks with LIHTC	45
213 Cooperatives	50
221(d)(3) Nonprofit/Cooperative mortgagor	80
221(d)(3) Limited dividend with LIHTC	45
221(d)(4) NC/SR with or without LIHTC	45
232 NC/SR Health Care Facilities	57
232 NC/SR—Assisted Living Facilities with LIHTC	45
220 Urban Renewal Housing with LIHTC	45
220 Urban Renewal Housing without LIHTC	50
231 Elderly Housing	50
231 Elderly Housing with LIHTC	45
207/223(f) Refinance or Purchase for Apartments with or without LIHTC	*45
232/223(f) Refinance for Health Care Facilities without LIHTC	*50
232/223(f) Refinance for Health Care Facilities with LIHTC	*45
223(a)(7) Refinance of Apartments with or without LIHTC	45
223(a)(7) Refinance of Health Care Facilities without LIHTC	50
223(a)(7) Refinance of Health Care Facilities with LIHTC	45
223d Operating loss loan for Apartments	80
223d Operating loss loan for Health Care Facilities	80
241(a) Improvements/additions for Apartments/coop	80
241(a) Improvements/additions for Apartments/coop with LIHTC	45
241(a) Improvements/additions for Health Care Facilities without LIHTC	57
241(a) Improvements/additions for Health Care Facilities with LIHTC	45
242 Hospitals	50
Title XI—Group Practice	50

*The first year MIP for these programs will remain at 100 basis points.

Applicable Mortgage Insurance Premium Procedures

The MIP regulations are found in 24 CFR part 207. This notice is published in accordance with the procedures stated in 24 CFR 207.252, 207.252(a), and 207.254.

Transition Guidelines

A. General

If a firm commitment has been issued at a higher MIP and FHA has not initially endorsed the note, the lender may request the field office to reprocess the commitment at the lower MIP and reissue the commitment on or after the October 1, 2005 effective date.

B. Extension of Outstanding Firm Commitments

FHA may extend outstanding firm commitments when the Hub/Program Center determines that the underwriting conclusions (rents, expenses, construction costs, mortgage amount and case required to close) are still valid in accordance with Mortgagee Letter 03–21, ''FHA Policies for Controlling Multifamily Firm Commitments and Credit Subsidy,'' dated December 3, 2003.

C. Reprocessing of Outstanding Firm Commitments

FHA will consider requests from mortgagees to reprocess outstanding firm commitments at the lower mortgage insurance premium once the new premiums become effective on October 1, 2005:

1. Outstanding commitments with initial 60-day expiration dates on or after the effective date of this MIP notice.

• FHA Multifamily HUD Hub/Program Center staff will simply reprocess these cases to reflect the impact of the lower MIP and reissue commitments with a new date.

2. Outstanding commitments with initial expiration dates prior to the effective date of this MIP notice which have pending extension requests or have had extensions granted by FHA beyond the initial 60-day period of the commitment.

• These cases will require more extensive reprocessing by FHA staff. Reprocessing will include an updated FHA field staff analysis and review of rents, expenses and construction/rehabilitation costs, particularly considering any changes in Davis-Bacon wage rates on new/substantial cases and cash required to close. An updated appraisal and other exhibits may be required from the mortgagee depending on the age of the appraisal and the age of the commitment (See Mortgagee Letter 03–21) . If reprocessing results in favorable underwriting conclusions, Hub/Program Center staff will reissue commitments with a new date at the new MIP.

D. Reopening of Expired Firm Commitments

FHA will consider mortgagee's requests, which may be either updated traditional application processing (TAP) firm commitment applications or updated multifamily accelerated processing (MAP) applications with updated exhibits, to reopen expired 50 basis points commitments on or after October 1, 2005, provided that the reopening requests are received within 90 days of the expiration of the commitments and include the $.50 per thousand of requested mortgage reopening fee. Reopening requests will be reprocessed by FHA field staff under the instructions in paragraph C.2 above and Mortgagee Letter 03–21.

After expiration of the 90-day reopening period, mortgagees are required to submit new applications with the $3 per thousand application fee.

Credit Subsidy

A credit subsidy obligation is required for the three sections of the Act listed below. If the mortgagor's equity is produced from LIHTC for sections 221(d)(3) and 241(a), a credit subsidy obligation will not be required.

- Section 221(d)(3) for new construction or substantial rehabilitation
- Section 223(d) for operating loss loans for both apartments and health care facilities
- Section 241(a) for supplemental loans for additions or improvements for apartments only.

Dated: August 18, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 05–17242 Filed 8–29–05; 8:45 am]

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Federal Register

Tuesday,
August 30, 2005

Part VI

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2520

Electronic Filing of Annual Reports; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AB04

Electronic Filing of Annual Reports

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed regulation.

SUMMARY: This document contains a proposed regulation that, upon adoption, would establish an electronic filing requirement for certain annual reports required to be filed with the Department of Labor by plan administrators and other entities. The Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (the Code), and the regulations issued thereunder, impose certain annual reporting obligations on pension and welfare benefit plans, as well as on certain other entities. These annual reporting obligations generally are satisfied by filing the Form 5500 Series. Currently, the Department of Labor, the Pension Benefit Guaranty Corporation, and the Internal Revenue Service (the Agencies) use an automated document processing system—the ERISA Filing Acceptance System—to process the Form 5500 Series filings. As part of the Department's efforts to update and streamline the current processing system, the Department has determined that improvements and cost savings in the filing processes can best be achieved by adopting a wholly electronic filing processing system and eliminating the currently accepted paper filings. The Department believes that a wholly electronic system will result in, among other things, reduced filer errors and, therefore, reduced correspondence and potential for filer penalties; more timely data for public disclosure and enforcement, thereby enhancing the protections for participants and beneficiaries; and lower annual report processing costs, benefiting taxpayers generally. As part of the move to a wholly electronic filing system, the regulation contained in this document would, upon adoption, require Form 5500 filings made to satisfy the annual reporting obligations under Title I of ERISA to be made electronically. In order to ensure an orderly and cost-effective migration to an electronic filing system by both the Department and Form 5500 filers, under the proposal the requirement to file electronically would not apply until plan years beginning on or after January 1, 2007, with the first electronically filed forms due in 2008. Upon adoption, this regulation would affect employee pension and welfare benefit plans, plan sponsors, administrators, and service providers to plans subject to Title I of ERISA.

DATES: Written comments must be received by the Department of Labor on or before October 31, 2005.

ADDRESSES: Comments should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attn: Form 5500 E-filing regulation (RIN 1210–AB04). Comments also may be submitted electronically to *e-ori@dol.gov* or by using the Federal eRulingmaking Portal: *http://www.regulations.gov* (follow instructions provided for submission of comments). EBSA will make all comments available to the public on its Web site at *http://www.dol.gov/ebsa*. The comments also will be available for public inspection at the Public Disclosure Room, N–1513, EBSA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Yolanda R. Wartenberg, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Sections 104(a) and 4065 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and sections 6057(b) and 6058(a) of the Internal Revenue Code of 1986, as amended (the Code), and the regulations issued under those sections, impose certain annual reporting and filing obligations on pension and welfare benefit plans, as well as on certain other entities.[1] Plan administrators, employers, and others generally satisfy these annual reporting obligations by filing the Form 5500 Annual Return/Report of Employee Benefit Plan, together with any required attachments and schedules for the particular plan (Form 5500).[2]

Currently, the Department of Labor, the Pension Benefit Guaranty Corporation, and the Internal Revenue Service (the Agencies) use an automated document processing system—the ERISA Filing Acceptance System (EFAST)—maintained by the Department of Labor (the Department) to process annual reports. Using the EFAST system, the Department annually receives and processes approximately 1.4 million filings. For the 2002 plan year, these filings translated into approximately 25 million paper pages.

Developed in 1998 and 1999, the EFAST system relies on a mixture of filing and processing methods to accept, compile, and monitor the Form 5500 filings. The EFAST system currently accepts filings generated using any of three different formats: (1) Government printed ''hand-print'' forms, which must be filed on paper; (2) computer-generated paper forms identical in format to government-printed hand-print forms, which also must be filed on paper and are treated in processing the same as hand-print forms; and (3) computer-generated forms in which 2D bar code technology is used to encode filer data (known as the ''machine-print'' version of the forms), which may be filed either on paper or electronically. As indicated, only the computer-generated machine-print forms may be filed electronically, and the Agencies currently accept machine-print filings through any of the following electronic methods of transmission: (1) Via modem using file transfer protocol (FTP), or (2) on magnetic or optical media, such as CD–ROM, computer diskette, or magnetic tape. To process the different filing formats, the system uses a variety of computer technologies, such as optical character recognition technology to read data from the hand-print forms; 2D bar-coding technology to read coded filer information printed on the ''machine-print'' forms submitted on paper; scanning technology to retain images of paper filings; etc.

A private contractor performs the EFAST processing under a time-limited contract with EBSA. The end of the time-limited contracting cycle and the

[1] Other filing requirements may apply to employee benefit plans under ERISA or to other benefit arrangements under the Code, and such other filing requirements are not within the scope of this proposal. For example, Code sec. 6033(a) imposes an additional reporting and filing obligation on organizations exempt from tax under Code sec. 501(a), which may be related to retirement trusts that are qualified under sec. 401(a) of the Code. Code sec. 6047(e) also imposes an additional reporting and filing obligation on pension benefit plans that are employee stock ownership plans (ESOPs).

[2] For purposes of the annual reporting requirements under the Code, certain pension benefit arrangements that cover only business owners or partners (and their spouses), which are not employee benefit plans under Title I of ERISA, are permitted to file the Form 5500–EZ to satisfy filing requirements under the Code. *See* instructions to the Form 5500–EZ to determine who may currently file the Form 5500–EZ.

beginning of another contracting cycle present a significant opportunity for EBSA to evaluate the system and to make changes to take advantage of technological advances. In connection with that process, in March, 2004, the Department posted a request for public comments (Request for Comment) on its website relating to updating the current EFAST processing system.[3]

The Request for Comment set out the Department's preference for enhanced electronic filing and described in detail its understanding of the deficiencies in the EFAST design that impede use of the current electronic filing option. The Request for Comment stated that the Department's goal in developing a new processing system is to make it ''more accessible to its user base through Internet and Web-based technology, devoid of paper to the greatest extent possible, faster, less expensive, and more accurate'' and to ensure that ''electronic filing becomes more convenient and beneficial for all users and stakeholders.'' The Department noted that ''[t]he full benefits of electronic processing have not * * * been realized * * * because [EFAST's] electronic filing option has been underutilized.'' [4] The Request for Comment noted the benefits to be gained from electronic filing, explaining that, compared with electronic filings, using paper-based forms is less accurate in terms of data capture and less efficient in terms of processing—paper filings take three times as long as electronic filings to process and have nearly twice as many errors, which often trigger follow-up letters from the Agencies seeking corrections or clarifications concerning the filed information. Such filings may also result in the imposition of penalties under ERISA and the Code.

Signaling the Department's interest in moving to an electronic filing system for the Form 5500 Series, the Request for Comment specifically requested comment on whether a reduction in the available filing methods, up to and including adoption of an electronic filing mandate, would be an appropriate solution to the problems caused by underutilization of electronic filing.

In response to the Request for Comment, the Department received many constructive and useful comments from a diverse group of interested parties, including small business owners, sponsors and administrators of small and large plans, actuaries, accountants, entrepreneurs involved in the development and sale of EFAST-approved software, and firms that prepare Form 5500 filings for a wide variety of employee benefit plans.[5] Public comment was largely in accord with the Department's analysis of EFAST's technical deficiencies as laid out in the Request for Comment.

Based on what appears to be a consensus as to the current technical deficiencies of EFAST, the Department has begun the technical process necessary for the development of a new processing system. At the same time, the Agencies separately are undertaking a comprehensive review of the Form 5500 Series in an effort to determine what, if any, design or data changes should be made, in anticipation of the new processing system. Neither the technical project for development of a new processing system, nor the Form 5500 Series project, however, is the subject of this proposal.[6] Any Form or related regulation changes will be proposed for public comment as part of a separate rulemaking.

The subject of this proposal is the Department's determination that any new processing system designed to replace EFAST must have as its core component a requirement that all Form 5500s be submitted through electronic means. The Department's determination that electronic filing must be the sole method available under the new processing system is not dependent on the extent or type of data that will be required of filers or the form or forms in which it must be provided; nor is it dependent on the exact software or hardware that will ultimately be devised to accommodate electronic filing, either by the Federal government or by the private sector. Rather, this determination arises from the Department's conclusion that electronic filing will benefit plan sponsors, participants and beneficiaries, and the taxpayer, based on the Department's investigation and analysis, described more fully below, of the practical alternatives. The proposal for an electronic filing requirement contained in this notice is therefore being published in advance of the other projects related to the Form 5500 Series and processing because the Department has concluded, based on considerations explained more fully below, that it is essential to the success of any redesign of EFAST that it provide filers and other affected parties adequate time to make the transition to a fully electronic method of filing the Form 5500 Series. Given the importance of the contemplated transition, the Department is publishing this proposal separately to describe the reasoning behind its conclusion and to solicit public comment on how best to proceed with the transition to electronic filing.

B. Public Comment and Alternatives

Virtually all of the public comments submitted in response to the Request for Comment recognized the value of electronic filing over paper filing and expressed support for increasing the use of electronic filing. The majority of comments also endorsed the concept of a gradual transition to 100 percent electronic filing. A clear consensus among commenters further favored the development of a secure Internet website on which a filer could file the Form 5500 through direct input of data, provided it was cost-free to the filer. Nonetheless, the commenters opposed an immediate mandate of electronic filing as the next step in EFAST development. The commenters argued that an immediate mandate would impose economic burdens on small businesses and small plans, which may not have easy access to the Internet. The commenters urged the Department to make only incremental changes, building on the current system and taking into account the substantial investments that the filing public has already made to accommodate EFAST. One representative commenter, speaking on behalf of a large number of large employers and service providers to employers of all sizes, suggested that, although electronic filing provides

[3] The Request for Comment may be reviewed at: *http://www.efast.dol.gov/efastrfc.html.*

[4] The Department specifically identified technical deficiencies involving the process for obtaining and using electronic signatures, the use of outdated transmission methods, and the continued use of paper for post-filing communications. The Request for Comment suggested various technical design changes to address these and other deficiencies, including creating an Internet-based method of filing; requiring that approved software be designed only for Internet transmission of computer-generated filings; adopting improved data exchange technology based on widely-accepted standards, such XML; improving the technical handling of third-party attachments and attestations; and eliminating differences in treatment between paper and electronic filings with respect to acceptance and rejection.

[5] Comments received in response to the Request for Comment may be reviewed at: *http://www.dol.gov/ebsa/regs/cmt_efastrfc.html.*

[6] In connection with this proposal, the Department is providing in this document further information respecting the technical design and Form 5500 content projects underway within the Department concerning the Form 5500 Series. The Department believes the information about those two other projects will assist the public in evaluating this proposal; however, the Department notes that it is not asking for public comment at this time on those two separate projects. The proposal contained in this notice concerns only the mandate of electronic filing. The public will have adequate separate opportunity for public comment on the Form 5500 regulatory initiative prior to its finalization and ample time to make necessary practical changes prior to implementation of the new processing system.

many advantages to both the public and the government, the Department should phase in any mandate over time by market segment, starting first with the largest employers who are already familiar with electronic filing, such as is required by the Securities and Exchange Commission. Other commenters asked the Department to allow sufficient time for experimentation and testing before inaugurating a mandate.

In developing this proposed regulation, the Department sought to advance two main goals. One was to maximize the speed, efficiency, and accuracy with which annual reports are transmitted, accepted, and processed, thereby enhancing the protection of participants' rights. The other was to minimize the burden placed on filers. In pursuit of these goals, the Department considered and analyzed several alternatives, taking into account the costs and benefits attendant to each. These included the following: (1) Creating a new processing system that could continue to process both electronic and paper submissions without limitation; (2) continuing the present, primarily paper-based processing system on an interim basis alongside a new, solely electronic processing system; (3) developing a new, primarily electronic processing system with a temporary capacity to process a limited number of paper filings, which would be made available under criteria targeting those filers most likely to desire a longer transition period; and (4) transitioning to a new, solely electronic processing system under a uniformly applicable requirement to file electronically.

The Department considered the costs and benefits of each of these alternatives, and its economic analysis is described below under the heading ''Regulatory Impact Analysis.'' Based on its analysis of the alternatives, the Department has concluded that the maintenance of any paper filing system, even on a reduced scale and/or for limited periods of time, which would be required under any of the first three alternatives, would be inherently inefficient and unnecessarily costly. It is also the Department's view that any economic benefit that might accrue to some class of filers under those alternatives would be outweighed by the benefits to participants and beneficiaries at large, and to the Department and taxpayers generally, of implementing a single, wholly electronic system. Accordingly, the Department has decided to propose adoption of a uniform requirement to file electronically, as detailed further below.[7]

In so doing, the Department believes that transitioning to a new wholly electronic processing system will not present the problems suggested by the public responses to the Request for Comment. First, as explained more fully below, the Department intends to ensure that the new processing system will remedy the existing technical difficulties that underlie the perceived limitations of EFAST's current electronic filing design and will provide an electronic filing process that will be simpler, easier, and more attractive to filers.

Second, the Department does not believe that transitioning to the new processing system will impose undue burdens on small plans or small employers. Rather, the Department's analysis indicates that filers' costs of transitioning from paper filing to electronic transmission will be relatively modest and surpassed by benefits that will accrue in subsequent years.

Finally, the Department intends to delay implementation of any electronic mandate until the due date for the filing of Form 5500 Series for the plan year beginning in 2007, generally July 2008 or later. The Department believes that this substantial time delay of the proposed full electronic mandate will provide the public with adequate time to make adjustments in advance of the implementation of the new filing system.

The Department's conclusions concerning the public comments and alternatives are grounded in the Regulatory Impact Analysis presented below.

The Department invites comment on the need for an exception to accommodate any potentially significant impediments to some filers' transition to electronic filing. Commenters are encouraged to provide specific examples of such impediments, as well as to address the specific conditions for, and necessary scope of, relief under a hardship exception.

C. Electronic Filing

After careful consideration of the comments on the Request for Comment, as well as the need to develop a more efficient, cost-effective processing system for annual return/reports, the Department has determined, consistent with the goals of E-government, as recognized by the Government Paperwork Elimination Act[8] and the E-Government Act of 2002,[9] to require electronic filing of the Form 5500 to satisfy the reporting requirements of section 104(a) of Title I of ERISA. A mandate of electronic filing of benefit plan information, among other program strategies, will facilitate EBSA's achievement of its Strategic Goal of ''enhancing pension and health benefits of American workers.'' EBSA's strategic goal directly supports the Secretary of Labor's Strategic Goals of ''protecting workers benefits'' and of ''a competitive workforce,'' as well as promoting job flexibility and minimizing regulatory burden.[10] A cornerstone of our enforcement program is the collection, analysis, and disclosure of benefit plan information. Requiring electronic filing of benefit plan information, with the resulting improvement in the timeliness and accuracy of the information, would, in part, assist EBSA in its enforcement, oversight, and disclosure roles, which ultimately enhance the security of plan benefits. As the Government Accountability Office noted in its June, 2005, report on the Form 5500 Series,[11] the current necessity for handling paper filings under EFAST creates a substantial delay between receipt of a filing and the availability of its information for any enforcement and oversight purposes. Stating that ''the abundance of paper filings results in long processing times,'' the GAO estimated, for purposes of illustration, that the processing time for a paper filing under EFAST averages 90 days from date of receipt where no filing errors are detected.[12] Electronic filing would eliminate virtually all of this processing time, improving outcomes for all of the users of the Form 5500 information. In this regard, the PBGC has advised the Department that

[7] This approach is congruent with recommendations of the Government Accountability Office, which, in a June, 2005, Report to Congressional Committees, stated that ''[g]iven the improved timeliness and reduced errors associated with electronic filing, Labor, IRS and PBGC should require the electronic filing of the Form 5500.'' *See Private Pension—Government Actions Could Improve the Timeliness and Content of Form 5500 Pension Information* (GAO–05–491) at 44. The Report went on to state ''[i]n doing so, Labor should also make improvements to the current electronic filing process to make it less burdensome, such as revising the procedure for signing and authenticating an electronic filing.''

[8] Title XVII, Pub. L. 105–277, 112 Stat. 2681 (Oct. 21, 1998).

[9] Pub. L. 107–347, 116 Stat. 2899 (Dec. 17, 2002).

[10] For further information on the Department of Labor's Strategic Plan and EBSA's relationship to it, *see http://www.dol.gov/_sec/stratplan/main.htm.*

[11] *See* fn. 7, above.

[12] *See Private Pensions—Government Actions Could Improve the Timeliness and Content of Form 5500 Pension Information* (GAO–05–491) at 28, fig. 9 at 32. GAO also noted that, where errors in a filing are detected, additional processing delays of up to 120 more days occur.

electronic filing will enable PBGC to receive important information about defined benefit plans more quickly and efficiently, improving the PBGC's ability to monitor plan funding; calculate bankruptcy claims; estimate the impact of non-bankruptcy reportable events; evaluate exposure and expected claims; study plan formation and termination trends; and assess compliance with PBGC premium requirements.

In order to ensure an orderly and cost-effective migration to an electronic filing requirement and a new processing system, the requirement to file the Form 5500 electronically would apply only to annual return/reports required to be filed under ERISA section 104(a) for plan years beginning on or after January 1, 2007.

For purposes of the annual reporting requirements under section 4065 of Title IV of ERISA, the Pension Benefit Guaranty Corporation (PBGC) has advised the Department that a plan administrator's electronic filing of a Form 5500 for purposes of ERISA section 104(a), together with the required attachments and schedules and otherwise in accordance with the instructions to the Form, will be treated as satisfying the administrator's annual reporting obligation under section 4065 of Title IV of ERISA.[13] Similarly, for purposes of the annual filing and reporting requirements of the Code, the Internal Revenue Service (IRS) has advised the Department that, although there are no mandatory electronic filing requirements for a Form 5500 under the Code or the regulations issued thereunder, the electronic filing of a Form 5500 by plan administrators, employers, and certain other entities for purposes of ERISA section 104(a), together with the required attachments and schedules and otherwise in accordance with the instructions to the Form, will be treated as satisfying the annual filing and reporting requirements under Code sections 6058(a) and 6059(a). The IRS intends that plan administrators, employers, and certain other entities that are subject to various other filing and reporting requirements under Code sections 6033(a), 6047(e), and 6057(b) must continue to satisfy these requirements in accordance with IRS revenue procedures, publications, forms, and instructions.

With respect to annual reporting and filing obligations imposed by the Code but not required under section 104(a) of ERISA, such as are currently satisfied by the filing of the Form 5500–EZ, the IRS has advised the Department that it is currently working with taxpayers to explore how best to make a transition from paper filing to electronic filing in a manner that minimizes the burdens on taxpayers and practitioners. In this regard, the IRS has promulgated regulations mandating or permitting electronic filing of certain returns filed by pension and welfare benefit plans.[14]

With regard to the development of a new annual return/report electronic processing system, the Department is committed to resolving the electronic filing impediments identified by commenters on the Request for Comment, in particular those impediments relating to electronic signatures, attachments, and attestations furnished by third parties (e.g., accountants, actuaries, etc.).

It is anticipated that the new electronic filing system will incorporate the Internet as the sole medium for transmission of all filings and that the system will incorporate immediate validity and accuracy checks that will reduce both the error and rejection rate of filings and eliminate much of the costly post-filing paper correspondence and related potential penalties. The Department does not anticipate charging any filing fees in connection with the new system.

It is intended that the new electronic filing system will provide more than one vehicle for the electronic submission of annual return/reports. First, it is intended that the new filing system will offer users of approved, privately developed Form 5500 computer software (service providers to plans as well as plan administrators) a secure Internet-based method for transmission of Form 5500s created through the use of the software. This Internet-based transmission process will supercede all of the other currently available methods of transmitting machine-print versions of the Form 5500, including use of computer diskette, CD–ROM, magnetic tape, and modem. As the Department made clear in the Request for Comment, in making a transition to 100 percent electronic filing, the Department does not intend to supplant private software developers, vendors, or service providers to plans. Rather, it is contemplated that the new system will continue to provide support to these private industries, and the Department believes that filers will continue to rely on a variety of privately developed software products and services to facilitate plan administration, including the preparation and filing of the annual return/report. Indeed, it is expected that third-party software will remain the primary means of producing Form 5500s, with the simple difference that the reports will be filed electronically rather than through the use of paper. It is intended that service providers and software developers that provide value-added services for plan sponsors will be able to incorporate the new system's method of transmission into their services effectively and efficiently. Software file specifications will be non-proprietary so that users of different software may freely share information across different platforms. In this regard, the Department specifically invites public comment on how best to configure the new electronic filing architecture to provide the necessary flexibility to accommodate the needs of the diverse community of employee benefit plans.

Second, the Department also intends to include in the new system, as a separate filing method, a dedicated, secure Internet website through which plan administrators (or other return/report preparers) will be able to input data and to complete and submit Form 5500 filings on an individual plan-by-plan basis. It is anticipated that the Internet website will provide the filer with the capability of entering and saving data for an individual filing through multiple sessions, authorizing input for that filing from multiple parties (service providers, accountants, actuaries, etc.), uploading attachments, saving return/reports to a repository, and retrieving, updating, and editing stored filings, as well as creating and submitting amended filing data to EBSA.

As mentioned above, in connection with implementation of the redesign of EFAST, the Department, in coordination with the IRS and the PBGC, is conducting a thorough content review of the Form 5500. This review will be conducted as a three-agency regulatory initiative and will provide notice and comment opportunities for the public. The Department intends to consider, in conducting the content review of the Form 5500, changes that would facilitate electronic filing, as well as recommendations made by the ERISA Advisory Council on electronic reporting and on reporting by health

[13] It should be noted that all administrators of plans required to file reports under ERISA sec. 4065 also are required to file reports for purposes of sec. 104(a) of ERISA.

[14] *See*, e.g., 26 CFR 301.6033–4T (mandating electronic filing of certain corporate income tax returns and returns of organizations required to be filed under Code sec. 6033); 26 CFR 1.6033–4T (returns required to be filed on magnetic media under 26 CFR 301.6033–4T must be filed in accordance with IRS revenue procedures, publications, forms, or instructions).

and welfare plans.[15] That regulatory project will undertake to produce revised forms to be used for annual return/reports for the 2007 plan year, which will be due to be filed in 2008, when the new processing system will be implemented and the electronic filing requirement will begin to apply. Within the next few months, the Department intends to publish a separate notice inviting public comment on proposed changes to the Form 5500 and related rules.

D. Proposed Rule

The proposed rule contained in this notice is necessary to establish a requirement for the electronic filing of the Form 5500 for purposes of the annual reporting provisions of Title I of ERISA. Although at this time it is not possible to provide full technical details regarding the new electronic filing system, as many of the technological aspects of the redesign are still in development, filing requirements and compliance instructions will be provided to filers in advance of any due date for filing the Form 5500 under a final regulation requiring electronic submissions.

The proposal, upon adoption, would add a new section 2520.104a–2, Electronic Filing of Annual Reports, to Subpart E of Part 2520 of Title 29 of the Code of Federal Regulations. The proposal provides that any Form 5500 Annual Return/Report to be filed with the Secretary of Labor (Secretary) for any plan year beginning on or after January 1, 2007, shall be filed electronically in accordance with instructions and such other guidance as the Secretary may provide, applicable to such annual report. Because the Form 5500 is also filed by certain non-plan entities, such as common or collective trusts, pooled separate accounts, and entities described in 29 CFR 2520.103–12, which file for the fiscal year ending with or within the plan year for which a plan's annual report is filed, the proposal makes further reference to the first ''reporting year'' beginning on or after January 1, 2007, for such entities.

The proposal is intended to ensure that all Form 5500s filed with the Department, as well as any statements or schedules required to be attached to the report, including those filed by administrators (29 CFR 2520.103–1(a)(2) and (e)), group insurance arrangements (29 CFR 2520.103–2), common or collective trusts and pooled separate accounts (29 CFR 2520.103–3, 2520.103–4, and 2520.103–9), and entities described in 29 CFR 2520.103–12, are required (to the extent of the Department's authority) to be filed electronically. Following the development of a new electronic filing system, the Department intends to provide specific instructions and guidance concerning methods of filing in the instructions for the annual report form(s) and via its website.

As indicated above in the discussion under ''Electronic Filing,'' the proposal would not apply to any reporting requirements imposed solely under the Code (i.e., not required under section 104(a) of ERISA). As discussed above, issues relating to transition from paper filing to electronic filing for such reporting requirements are under consideration at the IRS. Accordingly, the regulation would not apply to any attachment, schedule, or report required to be completed by a tax-qualified pension benefit plan solely in order to provide the IRS with information concerning compliance with Code section 410(b) for a plan year, even if such attachment, schedule, or report is required to accompany the Form 5500 Annual Report/Return for that year. The proposal also would not apply to attachments, schedules, or reports that the IRS requires (1) under Code section 6033(a) to be filed by a trustee of a trust created as part of an employee benefit plan described in Code section 401(a) or by a custodian of a custodial account described in Code section 401(f), or (2) under Code section 6047(e) to be filed with respect to an employee stock ownership plan (ESOP).

The proposal, at 29 CFR 2520.104a–2(b), makes clear that the requirement to file annual reports electronically does not affect a person's record retention or disclosure obligations. In other words, the obligations of persons to retain records for purposes of sections 107 and 209 of ERISA would not be altered by the fact that the annual report would be required to be filed in electronic form. Similarly, a plan administrator's obligation to make the latest annual report available for examination and to furnish copies upon request, in accordance with sections 104(b)(2) and 104(b)(4) of ERISA, will not be affected by an electronic filing requirement.

Conforming changes are being proposed to 29 CFR 2520.103–1(f) [contents of the annual report], 2520.103–2(c) [contents of the annual report for a group insurance arrangement], 2520.103–9(d) [direct filing for bank or insurance carrier trusts and accounts], and 2520.103–12(f) [limited exception and alternative method of compliance for annual reporting of investments in certain entities].

E. Regulatory Impact Analysis

Summary

The Department has considered the potential costs and benefits of this proposed regulation. Costs to plans would consist mainly of a one-time, transition or start-up cost to make the change to electronic filing, generally to be incurred in 2008, which is estimated to be $23 million. Benefits to plans would include ongoing savings on material and postage and efficiency gains from the early detection and correction of more potential filing errors in the course of electronic filing, estimated to total $10 million annually, and realized each succeeding year beginning in 2008. Over time the ongoing savings attributable to this proposed regulation are expected to outweigh its one-time transition costs. Aggregate savings are estimated to exceed aggregate costs by $23 million over the first five years (discounting future savings at a rate of 7 percent).

Additional benefits are expected to accrue to the government and the public in the forms of substantially reduced processing costs and more timely availability of accurate filing data for use in enforcement and for other purposes of benefit to plans and participants.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive

[15] *See*, e.g., *Report of the ERISA Advisory Council Working Group on Electronic Reporting* (Nov. 8, 2002), at *http://www.dol.gov/ebsa/publications/AC_1108a02_report.html.*

Order. OMB has determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the Department has undertaken below an analysis of the costs and benefits of the proposed regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, EBSA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3) of ERISA, the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46, and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans that cover fewer than 100 participants and satisfy certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of these proposed rules on small entities.

These proposed rules may have a significant impact on a substantial number of small entities. The Department has therefore prepared an initial regulatory flexibility analysis, presented below under the heading ''Small Plans.'' Additional relevant material also appears below under the heading ''Alternatives Considered.''

Costs and Benefits

The Department has considered the potential costs and benefits of this proposed regulation. Costs to plans would include a one-time transition or start-up cost to make the change to electronic filing, estimated to be $23 million. Benefits would include ongoing savings on material and postage and efficiency gains from the early detection and correction of more potential filing errors in the course of electronic filing, estimated to total $10 million annually. Over time the ongoing savings attributable to this proposed regulation are expected to outweigh its one-time transition costs. Aggregate savings are estimated to exceed aggregate costs by $23 million over the first five year (discounting future savings at a rate of 7 percent). Additional benefits are expected to accrue to the government and the public in the forms of reduced processing costs and more timely availability of accurate filing data. Beyond that, it is not immediately clear how the costs and benefits of mandatory electronic filing will compare with that of current filing modes, and the Department invites comments on this point.

The costs and benefits of this proposed regulation would accrue primarily to 832,000 plans that file Form 5500.[16] Non-plan entities that file Form 5500 generally do so in their capacity as service providers to plans and therefore are expected to pass their own costs and benefits from the regulation on to the plans they serve.[17]

Transition Costs

The proposed regulation would entail some one-time transition costs, incurred in making the transition to electronic filing. The magnitude of the transition costs is likely to vary with filers' previous filing methods, reflecting the extent to which their existing filing infrastructure supports electronic filing. It is also expected that different filers will make the transition to electronic filing in different ways, depending on their circumstances and preferences. It is intended that all filers will have a number of methods of electronic filing from which to choose. For example, filers may enter information directly into a government-provided web site (using their own Internet service or one available for a fee at a local business center or free of charge at a public library or other facility). They may use commercial software equipped for electronic filing. They may hire a service provider (or rely on an existing relationship with a service provider) to provide electronic filing services.

In 2002, the bulk of all filings, 87 percent, were submitted on machine-print forms; 12 percent were submitted on hand-print forms; and 1 percent were submitted electronically.

Hand-print Filers—Hand-print filers as a group are likely to face larger transition costs than others. These filers by and large currently file government printed forms, filled out by hand or by using a typewriter.[18] Like all other filers, they will have the option of preparing and submitting their filings via a government provided web site. It is likely that many (but not all) already have the electronic infrastructure (mainly a personal computer and Internet service) to support electronic filing. It is also likely that others will have access to the Internet at no charge at a local library or other location.[19] Nonetheless, hand-print filers are likely to incur some expense to learn about the new requirement, and some will incur additional costs, such as in locating and becoming familiar with Internet access,

[16] The economic analysis of the proposed regulation pertains only to those plans that file a Form 5500 to satisfy filing requirements under Title I of ERISA. Because the Form 5500–EZ is filed to satisfy filing requirements under the Code, data related to Form 5500–EZ filers is not included in this analysis.

[17] Economy theory predicts that producers in competitive markets pass costs and savings on to buyers.

[18] A very small fraction of all hand-print filers, typically a few percent, files computer-generated forms that are similar to and processed in the same way as government printed forms. These filers might tend to incur smaller transition costs than other hand-print filers. Because of their small numbers and the difficulties in separately identifying them in the data used for this analysis, the Department did not attempt to adjust its estimates to reflect this possible difference. This omission may slightly bias upwards the estimated aggregate transition cost for hand-print filers.

[19] This assumption is consistent with observations made by the ERISA Advisory Council Working Group on Electronic Reporting in its Nov. 8 Report. *See* fn. 15, above.

as well as in establishing a secured filing account.

For the 104,000 current hand-print filers, the Department estimates a one-time, aggregate transition cost to electronic filing of $12 million. This assumes that a professional-level employee, who costs the plans on average $58.80 per hour in wages, benefits, and overhead,[20] would require on average two hours to make the transition to electronic filing. The cost might be devoted to one or more one-time, transition activities such as learning about the electronic filing system, registering for a secure filing account, selecting and acquiring software, selecting and hiring a service provider, or locating an Internet access site and becoming familiar with a web-based interface. Different types of transition activities will have different costs. Selecting and hiring a service provider might be an example of a potential activity that would cost more than average, while registering for a secure account might be an example of one that would cost less. The activities and the cost will vary from filer to filer. For example, transition activities might be limited and costs low for a filer that is a highly experienced Internet user already carrying out other aspects of business management (such as buying supplies and selling products, reporting wages to SSA, etc.) on line. Activities might be more extensive and costs higher for a filer lacking Internet and computing expertise who needs to acquire a computer and Internet connection or select and hire a service provider. The Department invites comments on transitional activities and costs.

Machine-print Filers—Machine-print filers as a group are likely to incur smaller transition costs than hand-print filers. It is likely that a large proportion of machine-print filings are prepared by service providers, while the remainder are prepared by filers using commercial software. Filers that currently rely on service providers to prepare and submit their filings may opt to continue in this manner, relying on the service provider to file electronically. Service providers' transition costs will be passed back to and spread across the filers they serve. Other machine-print filers may rely on the vendors of their software to incorporate electronic filing features into the 2007 plan-year software (probably as part of an otherwise normal annual software update typically carried out to incorporate any form and instruction changes). It is likely that a majority already have the Internet service required for such software features to function, and some that currently do not have such service would have acquired it by the time the plan-year 2007 filings are due (for reasons unrelated to this regulation). For many machine-print filers the transition to electronic filing will be largely transparent, but will nonetheless entail at least some activities, such as registration for a secure filing account.

For the 726,000 current machine-print filers, the Department estimates a one-time, aggregate transition cost to electronic filing of $11 million. This assumes that one-half of machine-print filers will rely entirely on their existing service providers to make the transition and that the service providers will spread their own transition costs across the filers they serve. The Department, lacking data on the number of affected service providers, did not attempt to estimate their transition cost, and such costs are not included here. Because these costs would be spread across filers, the amount passed on to any single filer is expected to be minimal. The remaining one-half of machine-print filers are assumed to shoulder the transition costs themselves. The Department's estimate assumes that these filers will require on average thirty minutes of a professional-level employee's time to make the transition to electronic filing. The Department invites comments on these transition costs.

Ongoing Costs and Benefits

Preparation Costs—This proposed regulation pertains to the filing, and not to the preparation, of the Form 5500. However, it is possible that, for some filers, mandatory electronic filing would prompt changes in preparation methods. For example, hand-print filers may currently prepare their filings using a government printed form and a typewriter. Such filers might prepare future filings by entering information into a government website. The Department considered the cost of making such transitions in preparation methods to be part of the overall transition cost of the proposed regulation, included in the estimates presented above.

With respect to ongoing preparation costs, it is likely that some filers will incur higher costs in connection with new preparation methods prompted by this regulation and enabled by the new electronic filing system than with their current methods, but that others will incur lower costs. For example, it is not immediately determinable whether entering information into a website will take more or less time than typing it onto a paper form. The Department expects that commercial preparation software will incorporate features that ease preparation, such as integrated access to form instructions and automatic filling of data fields based on entries in other fields or in prior filings. The Department also intends that the new government filing website interface will be designed with attention to ease of preparation. Lacking an immediate basis to quantify the magnitude or costs and savings from possible changes in preparation methods, the Department did not attribute any such costs or savings to this proposed regulation, but invites comments on the potential magnitude of any such costs and benefits.

Filing Cost Savings—Filing costs generally are expected to be reduced by the implementation of this proposed regulation. Savings are foreseen from the elimination of materials and mailing costs and from a reduction in filing errors and subsequent corrections.

Electronic transmission will eliminate certain costs otherwise attendant to paper filing, including materials and postage. The Department estimates that, by changing to electronic filing, 829,000 plans will benefit from approximately $900,000 in cost-savings annually, assuming savings of $0.0167 per sheet of paper and $0.57 for postage per filing.

In addition, automated checks for errors and omissions upon electronic transmission, together with automated error checks and integrated instructions common to filing preparation software, will ease compliance with reporting requirements. Importantly, these features will reduce the need for subsequent amendments to submitted filings, as well as helping to avoid reporting penalties that might otherwise be assessed for deficient filings.

Historically, filers that use a software-based system generally have fewer filing errors. In 2002, 7 percent and 16 percent of electronic and machine-print filings, respectively, had filing errors compared to 40 percent of hand-print filings. The filing errors include items such as missing signatures, attestations, schedules, or back-up documents that resulted in an incomplete filing. As a result of filer errors and the need for

[20] The total labor cost is derived from wage and compensation data from the Bureau of Labor Statistics' (BLS) 2004 National Occupational Employment and Wage Estimates from the Occupational Employment Survey and BLS 2004 Employment Cost for Compensation. This data can be found at: *http://www.bls.gov/news.release/ocwage.t01.htm* and *http://www.bls.gov/news.release/archives/ecec_09152004.pdf.* The estimate assumes a 3 percent annual rate of compensation growth and includes an overhead component which is a multiple of compensation based on the Government Cost Estimate.

additional information or clarifications about Form 5500 filings for the 2002 plan year, the Department mailed 160,000 letters to filers requesting corrections or additions. This process ultimately delays the final submission and requires plans to incur additional costs to address deficiencies. The electronic filing system's intended error detection capability may largely eliminate the Department's need to forward correspondence to plans with deficient filings. This enhancement is likely to save time for filers. If the need for correspondence can be eliminated, the aggregate annual cost savings to affected filers could be as high as $10 million, assuming elimination of correspondence with the Department saves an average of one hour of a professional's time, at an average of $58.80 per hour, plus the value of associated postage and materials. A disproportionate share of this savings, estimated at $2.4 million, would accrue to current hand-print filers (reflecting their historically higher filing error rates), while $7.1 million would accrue to machine-print filers. The Department (and by extension taxpayers) would realize additional savings from this reduced need to correct filing errors.

Societal Benefits

Additional benefits are expected to accrue to the government and the public in the forms of reduced processing costs and more timely availability of accurate filing data.

Participants will benefit from the transition to a fully electronic method of filing. The new filing procedures will provide participants and beneficiaries with access to more accurate plan information since software-based forms are generally less prone to error, the new system will process filings more quickly, and reports disclosing information about plans' administrative and financial status will be available to the public sooner than would otherwise be possible. This improved access can enhance the quality of interaction between plans, participants, and beneficiaries.

The Federal government and the public at large will also benefit from the change to electronic filing. The decrease in correspondence will constitute immediate savings to the Federal government that will, in turn, yield savings to the taxpayers. Finally, improvements in the accuracy of the data contained in submitted filings and the expected acceleration in processing may make possible more timely production of reliable national statistics on private employee benefit plans. Such statistics historically have been produced at a substantial lag of up to four years after the end of the filing year.

Additional Considerations

Proliferation of Technology—In proposing this regulation, and in assessing its economic impacts, the Department took into consideration the high and increasing rates of use of electronic information technologies by businesses, including by small businesses in particular. Such technologies include office computing hardware and software that process, organize, store, and transmit information electronically. The proliferation of such technologies, and of expertise and familiarity with using them, is expected to moderate the cost of compliance with this proposed regulation.

The Department believes that most filers already have access to a computer and the Internet. The use of computers and the Internet has become the norm among U.S. businesses. Most or all industries in the economy are beginning to use the Internet as a means of conducting at least some of their daily operations and to remain competitive. Moreover, it is possible that plan sponsors as a group are more likely than other companies to be using information technologies. The Department believes that few, if any, plan sponsors will purchase a computer or subscribe to Internet service for the sole purpose of electronically filing their Form 5500. (If some do, they may realize collateral benefits as they put their newly acquired technologies to additional uses.) Furthermore, the Department believes that the number of firms offering pension and welfare plans that do not have a computer and/or Internet access is a relatively small number, especially given the substantial growth of computer and Internet usage over the past decade. The Department also believes that the number of plans that will not have a computer or Internet access by the year 2008 will be small.

The Department's views on the proliferation of technologies are grounded in its review of various studies of the topic.

According to a 2002 study for the SBA,[21] the Internet offers unparalleled new opportunities for small businesses. Fifty-seven percent of small businesses already used the Internet; of those most had their own websites; and more than one-third were selling their products on line.[22] Of those not using the Internet, two-thirds did use computers.[23]

The most popular uses of the Internet among small firm users were communicating with customers and suppliers (83 percent), gathering business information (80 percent), and purchasing goods and services (61 percent).[24] Some also used the Internet to conduct banking or other financial transactions (27 percent) or bid on contracts (21 percent). Most firms with websites either broke even financially or made money through use of the sites.

Also according to this study, use of Internet technology is growing. Among small firms with websites, two-thirds had been operating the site for less than one year.[25] Business use of on-line technologies is being driven up by increasing use of such technologies by consumers. Increasing availability and use of affordable, fast broad-band Internet services is helping to drive both trends. Market forecasters predicted rapid growth in world e-commerce, reaching as much as several trillion dollars by 2004.[26]

A 2003 report by SBA [27] found that self-employed computer users numbered 10.5 million in 2000, up from 9.2 million two years earlier. Over the same two years, self-employed individuals' access to the Internet increased by 50 percent, reaching 83 percent of all such individuals.

A 2004 study for SBA [28] of small firms with fewer than 500 employees found that only 27 percent did not currently subscribe to Internet service.

Benefits of E-government—The proposed regulation will advance the goals of administration articulated in the Government Paperwork Elimination Act and the E-Government Act of 2002.

The Department expects this proposed regulation to advance the general trend toward the efficiencies of E-government. Federal, State, and local government agencies have already implemented numerous E-government initiatives.[29] These initiatives reduce

[21] Joanne H. Pratt, ''E-Biz: Strategies for Small Business Success'' 32 (2002) (prepared for the SBA Office of Advocacy), available at *http://www.sba.gov/advo/research/rs220tot.pdf.*

[22] Id. at 6.

[23] Id.

[24] Id. at 6–8.

[25] Id. at 11.

[26] Id. at 23–24.

[27] SBA Office of Advocacy, ''Self Employment and Computer Usage,'' 3 (2003), available at *http://www.sba.gov/ADVO/stats/sepc.pdf.*

[28] Stephen B. Pociask, TeleNomic Research, LLC, ''A Survey of Small Businesses' Telecommunications Use and Spending'' 71 (2004) (prepared for SBA Office of Advocacy), available at *http://www.sba.gov/advo/research/rs236tot.pdf.*

[29] *See*, e.g., ''Electronic Government: Challenges Must Be Addressed with Effective Leadership and Management,'' Hearing on S.803 Before the Senate Comm. in Governmental Affairs, 106th Cong. 1 (July

Continued

the government's burden on businesses by eliminating redundant collection of data. Citizens receive faster, more convenient services from a more responsive and informed government.[30] According to one study, citizens see the most important benefits of E-government as increased government accountability to citizens (36 percent), greater public access to information (23 percent), and more efficient/cost-effective government (21 percent).[31] The GAO has indicated that government agencies that reported using the Internet as a medium for core business operations delivered information and services more quickly, less expensively, and to wider groups of users.[32]

Another study suggests that one of the most powerful ways to reduce compliance costs is through E-government. Web-enabling can save businesses and citizens a considerable amount of time and money, as the following examples demonstrate: (1) The State of Oregon's on-line permitting and reporting process for building construction approvals saved Oregon's construction industry $100 million annually. Deloitte's estimate suggests that if governments at all levels were to follow Oregon's lead, the United States' construction industry, as a whole, could save in the range of $15 billion to $20 billion annually. (2) The SBA's Business Compliance One Stop website saves businesses about $526 million a year, by helping them find, understand, and comply with regulations. (3) In Canada, the province of British Columbia's OneStopBC website cuts down on government paperwork costs for businesses by allowing on-line business license registrations. The cost savings to businesses are estimated to be in the range of $14 million to $27 million annually.[33]

Time Rebates—Time considerations affect all interactions and activities in business. When citizens and businesses can go on line, instead of waiting in line, they can obtain faster, more convenient access to government services.[34] E-government can provide what has come to be described as a ''time rebate''—cutting down on the time it takes to comply with government regulations and to complete transactions.

For example, the Commonwealth of Pennsylvania's ''PA Open for Business'' website allows a business to enter all the information needed to register with the State in one place, instead of having to go to five different agencies. A process that once took days or weeks has been reduced to one hour.[35]

The Department intends that the new electronic filing system will be equipped to streamline submissions and reduce time and burden on filers. The proposed regulation should benefit all parties because the information contained in the Form 5500 would be directly entered into the Department's records. This would improve transaction accuracy, reduce cycle times, improve cost efficiencies, enhance information accessibility, and provide more timely availability of the information contained in the Form 5500 return/reports.

Alternatives Considered

As noted earlier in this preamble, before electing to pursue the approach taken in this proposed regulation, the Department considered alternative options for reconfiguring the filing methods for the Form 5500 Series, focusing in particular on the gradual approach advocated generally in the public comments. The following discusses three such alternatives that the Department considered but rejected, along with the reasons why each was rejected in favor of a uniform requirement to file electronically beginning with filings for the 2007 plan year. Fuller discussion of the third alternative, which would provide a time-limited exception from mandatory electronic filing for certain small plans, follows under the heading ''Small Plans.''

First, the Department considered developing a new processing system that could continue to process both electronic and paper submissions without limitation. Such a system might be popular with the filing public and might result over time in virtually complete conversion to electronic filing, provided that the new system successfully incorporated the contemplated technological advances. Such a ''dual method'' processing system would permit filers to choose between electronic and paper filing. It therefore would likely appear to some filers to be more cost-efficient than the uniform requirement to file electronically that the Department is proposing. However, while a ''dual method'' processing system might be popular with some filers, such a system would perpetuate the inefficiencies inherent in paper filings—larger number of filing errors, required correspondence with filers, increased likelihood of civil penalties, delays in reviews of filings, and increased risks to participants and beneficiaries resulting from erroneous data or delayed enforcement. It therefore does not appear to be in the interest of plans or participants to maintain such a system. In addition, the maintenance of such a system would entail additional costs for the Federal government (and by extension taxpayers) because it would be necessary to incorporate into the system the ability to receive and process a potentially large number of paper filings. In the Department's view, the additional costs for such a complex processing system would be virtually prohibitive for the Federal government in light of current budgetary constraints on the Federal government generally and on the Department in particular. Under such constraints, maintaining a paper filing system would consume resources that would be better devoted to enhancing the system's electronic filing capabilities or carrying out other Department functions.

Second, the Department considered the alternative of continuing the present paper processing system on a short-term interim basis during the initial years of operating a new, solely electronic processing system. This alternative would enable filers to gain familiarity with the new paperless system as part of the transition process. As with the prior approach, this approach would continue, albeit for a limited period, the current inefficiencies of a paper system and the substantial costs of maintaining tandem operations, particularly since continuing the old processing system would require ''sole source'' non-competitive yearly contractual negotiations with the current contractor, with ever increasing additional costs. For example, in fiscal year 2006 the Department requested an additional $2.1 million to maintain current

11, 2001) (statement of David McClure, Director, Information Technology Management Issues, GAO), available at *http://www.gao.gov/new.items/d01959t.pdf.*

[30] Susie Trinkle, Capella Univ., ''Moving Citizens from in line to Online: How the Internet is Changing How Government Serves its Citizens'' (Sept. 10, 2001, available at *http://oma.od.nih.gov/ma/bps/bpkm/Resource/Y_MovingCitizens FromLineOn.doc.*

[31] Hart-Teeter, ''E-Government: the Next American Revolution'' (Sept. 28, 2000) available at *http://www.excelgov.org/displaycontent.asp?keyword=mReleases&NewsItemID=2559.*

[32] Testimony of David A. McClure, GAO, before the Subcommittee on Government Management, Information and Technology, Committee on Government Reform, House of Representatives (2000), as reported in Karen Laynea and Jungwoo Leeb, *Government Information Quarterly* 18 (2001), 122–136.

[33] William D. Eggers, Global Director, Deloitte Research-Public Sector, ''Citizen Advantage: Enhancing Economic Competitiveness Through e-Government'' 1 (2004).

[34] Gassan Al-Kibsi; Kito de Boer; Mona Mourshed; Nigel P. Rea; ''Putting citizens on-line, not in line,'' McKinsey Quarterly 2001 no. 2.

[35] *See* Eggers, supra note 25 at 7, 14.

operations in the first year of a sole source contract.

Third, the Department considered developing a new processing system that would have the temporary capacity to process paper filings from a targeted group of filers under an exception from the electronic filing requirement. For reasons described below under ''Small Plans,'' the Department considered it appropriate to limit the exception to small plans that had previously filed government printed ''hand-print'' forms and that are not subject to the audit requirement. The Department believes that making such an exception available, at least for the first few years of operating the new processing system, might provide a small net benefit to at least some proportion of this class of filers. However, the Department believes this potential benefit, which could amount (as explained further below) to as little as $14 per plan on average for 74,000 plans or as much as $249 per plan on average for 7,400 plans, is outweighed by the benefits to participants and beneficiaries at large, and to the Department and taxpayers generally, of implementing a single, wholly electronic filing system beginning with reports for the 2007 plan year. The maintenance of any paper system, even on a reduced scale, is inherently inefficient and unnecessarily costly and could undermine full realization of the potential benefits of electronic filing for ERISA compliance and enforcement, thereby exposing some plans and participants to unnecessary risk. Accordingly, the Department rejected this alternative, along with the other two considered alternatives, in favor of a uniform requirement to file electronically.

The Department's consideration of this third alternative, and its basis for rejecting it in favor of a uniform requirement to file electronically, is detailed below under the heading ''Small Plans.''

Small Plans

The Department believes this regulation may have a significant impact on a substantial number of small plans. As for all other plans, costs and benefits for small plans are expected to vary with the plans' circumstances. Most will likely incur moderate transition costs and subsequently realize moderate ongoing savings. Some, however, may experience larger impacts, including both larger transition costs and/or ongoing net cost increases rather than ongoing net savings. For example, some small plans may lack experience with or easy access to the Internet. Such plans may incur larger than typical transition costs to gain access to the Internet (or to enlist a service provider with access) and may find it more time consuming, and therefore more costly, to prepare their filing on a government website (or to interact with a service provider) than to prepare their filing using a government printed form that is completed ''by hand'' and filed on paper through the mails. The Department expects that only a minority of plans might be so affected, but that minority might nonetheless represent a substantial number.

The Department therefore conducted an initial regulatory flexibility analysis, repeating the above analysis while limiting the scope to include only small plans—that is, those with fewer than 100 participants. On that basis, it is estimated that 667,000 small plans will incur one-time transition costs of $18 million, including $9 million for 78,000 current hand-print filers and $9 million for 589,000 current machine-print filers. It is further estimated that small plans would realize ongoing materials and postage savings of approximately $700,000 annually and could realize up to $7 million in savings annually from the elimination of the need to correct deficient filings (including $2 million accruing to hand-print filers and $5 million to machine-print), for a total of approximately $8 million in annual savings. As with all other plans, over time the aggregate ongoing savings realized by small plans are expected to outweigh their aggregate one-time transition costs. Over five years, savings are estimated to exceed costs by $17 million (discounting future savings at a rate of 7 percent). The Department believes that impacts may vary among small plans, depending for example on their (or their service providers') access to and familiarity with associated technologies, and possibly on their size. The Department, however, lacks a basis on which to estimate such variations. The Department invites comments on this assessment of the impact of the proposed regulation on small plans.

The Department also assessed the costs and benefits of alternative approaches. As noted above, the Department considered proposing a temporary exception from the requirement to file electronically for certain small plans. The Department undertook to develop as an alternative to a uniform electronic filing requirement an exception provision that would maximize benefits and minimize costs to affected parties including plans, participants, and taxpayers.

The Department first considered the criteria that should be adopted to designate filers eligible to continue to file on paper under the exception. The Department selected as the first criterion plan size. Small plans (and the small businesses that sponsor them) may be less likely than large ones to use computers and the Internet or to have current expertise in such usage. They may be harder pressed to devote resources to making a transition to electronic filing. Moreover, transition costs may be largely fixed costs (invariant to plan size) and therefore more burdensome to small than to large plans. The Department considered alternative plan size thresholds, including plans with fewer than 100, fewer than 25, or fewer than 10 participants. The threshold of fewer than 100 participants seemed most desirable. It is consistent with the threshold used for other distinctions in annual reporting requirements and therefore would not add additional complexity to reporting requirements. In addition, the overall systems requirements associated with an exception for plans with fewer than 100 participants would be expected to differ little from those associated with an exception limited to smaller plans. The cost of building, maintaining and periodically updating a system capable of accepting and processing paper filings is largely invariant to the number of paper filings to be accepted. Moreover, the number of plans eligible for the exception would not vary much across the thresholds considered. Among plans not subject to the audit requirement and filing by the hand-print method, the Department estimates that 74,000 have fewer than 100 participants, 59,000 fewer than 25, and 46,000 fewer than 10.

The second criterion identified by the Department was past filing method. As noted above, it is likely that hand-print filers will confront higher average transition costs than machine-print filers. Machine-print filers currently prepare their filings electronically, even if they do not file them electronically. In contrast, some fraction of hand-print filers may be entirely without computing infrastructure.

A third criterion identified by the Department was potential risk to participants. As noted above, hand-print filings are more prone to error than machine-print or electronic filings. In addition, processing of paper filings is inherently slower than processing of electronic filings. Therefore, continued acceptance of paper filings has the potential to slow both detection of ERISA violations and enforcement

actions to address such violations.[36] The Department therefore considered approaches that would limit the exception to situations where risks of violations (and associated threats to participants) were less, such as in connection with plans that, because of the presence of other safeguards and/or absence of certain risks, were not required to provide financial audits with their annual reports.

Finally, the Department considered the appropriate duration of such an exception. To accommodate such an exception, the Department's new processing system would need to incorporate an ability to receive and process some number of paper filings. The incorporation of this ability into the system would entail a relatively large, up-front development cost, followed by smaller but substantial ongoing costs to process paper filings. It therefore seemed reasonable to consider as the duration of such an exception the expected minimum ''lifetime'' of the new system (which corresponds to the expected duration of the contract that will develop and maintain it), which is five years. The Department next considered whether a five-year exception would be sufficient to accomplish the exception's goal of easing small plans' transition to electronic filing. Assuming continued rapid proliferation of computer and Internet usage, it seems likely that five years would be sufficient to accomplish this goal.

Based on this reasoning, the Department considered, as an alternative to a uniform 100 percent electronic filing requirement, a five-year exception for plans that: (1) Have fewer than 100 participants, (2) previously filed their annual reports using government printed ''hand-print'' forms, and (3) are not subject to the audit requirement for annual reporting under Title I of ERISA. The Department estimates that use of these criteria would create a class of 74,000 filers eligible for the temporary exception from electronic filing.

As noted above, small plans are estimated to face an aggregate transition cost of $18 million, followed by ongoing annual savings of $8 million. Over time the aggregate savings will outweigh the cost. But, also as noted above, a disproportionate share of the transition cost, $9 million, is estimated to accrue to the small minority of small plans that file via the hand-print method. The savings accruing to these filers, being attributable to reduced materials and postage and, more important, reduced filing errors, if proportionate to their numbers, will amount to $2 million.

The Department undertook to carefully consider the potential costs and benefits to small plans of the exception defined above. Approximately 74,000 plans could be eligible for the exception. The Department considered two potential scenarios.

In the first scenario, the Department assumed that all eligible plans would file on paper, for an average of three of the five years for which paper filings would be permitted. The Department assumed further that these plans' average transition costs and ongoing savings would be the same as the average assumed earlier for all small plan hand-print filers.[37] The Department also assumed that, by taking advantage of the exception, these filers would reduce their transition cost to the level assumed earlier to be incurred by machine-print filers, but would delay commencement of the ongoing savings available through electronic filing until they began filing electronically (on average after three years). In this scenario, the 74,000 filers taking advantage of the exception would reduce their transition costs by $6.5 million on aggregate, while sacrificing $5.5 million in potential ongoing savings, thereby realizing a net benefit of approximately $1 million, or $14 per filer.

In the second scenario, the Department considered the possibility that the transition cost might vary widely across filers. The Department assumed that just 10 percent of eligible filers would take advantage of the exception (again for an average of three years), but that these filers would face a transition cost (absent the exception) of three times the average assumed for all hand-print filers. Other assumptions were the same as in the first scenario. In this scenario, 7,400 filers taking advantage of the exception would reduce their transition costs by $2.4 million on aggregate, while sacrificing $550,000 in potential ongoing savings, thereby realizing a net benefit of approximately $1.8 million, or $249 per filer.

On the basis of these scenarios, the Department believes that some filers would likely benefit from the exception. However, as noted above, the potential net benefit to a given filer from the exception would be modest. In the first scenario, the average net benefit would amount to just $12 per plan using the exception; in the second, $249 per plan. Further, the availability of the exception would create significant risks to participants and costs to the government (and taxpayers). As discussed above, the maintenance of any paper system, even on a relatively small scale, is inherently inefficient and costly. Also, as discussed above, paper filings take longer to process and therefore pose unnecessary compliance risks. Therefore, the Department concluded that the potential benefit of a limited exception would be outweighed by the associated cost to the government (and to taxpayers) and the potential risks to participants and that adoption of a limited exception could not be justified. For these reasons, the Department rejected the alternative of providing an exception in favor of a uniform requirement to file electronically.

Paperwork Reduction Act

This proposed regulation does not introduce, or materially modify, any information collection requirement, but furthers the Department's goal of automating the submission of the Form 5500 return/report. As such, this notice of proposed rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a ''collection of information'' as defined in 44 U.S.C. 3502(3).

Congressional Review Act

The notice of proposed rulemaking being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million or more.

List of Subjects in 29 CFR Part 2520

Employee benefit plans, pensions, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department proposes to amend 29 CFR part 2520 as follows:

[36] This concerns not merely reporting violations, but all potential ERISA violations, including those which might directly jeopardize plan assets or participants' benefits.

[37] This assumption seems reasonable insofar as an estimated 94 percent of all small hand-print filers were not subject to the audit requirement and therefore would be eligible for the exception.

1. The authority section of Part 2520 continues to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1, and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788.

2. Add § 2520.104a–2 after § 2520.104a–1 to read as follows:

§ 2520.104a–2 Electronic Filing of Annual Reports.

(a) Any Form 5500 Annual Return/Report (including accompanying statements or schedules) to be filed with the Secretary for any plan year (or reporting year, in the case of common or collective trusts, pooled separate accounts, and similar non-plan entities) beginning on or after January 1, 2007, shall be filed electronically in accordance with the instructions, and such other guidance as the Secretary may provide, applicable to such report.

(b) Nothing in paragraph (a) of this section is intended to alter or affect the duties of any person to retain records or to disclose information to participants, beneficiaries, or the Secretary.

3. Amend § 2520.103–1 by revising paragraph (f) as follows:

§ 2520.103–1 Contents of the annual report.

* * * * *

(f) *Electronic filing*. Except as provided in § 2520.104a–2 of this chapter, the Form 5500 ''Annual Return/Report of Employee Benefit Plan'' may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the plan administrator maintains an original copy, with all required signatures, as part of the plan's records.

4. Amend § 2520.103–2 by revising paragraph (c) as follows:

§ 2520.103–2 Contents of the annual report for a group insurance arrangement.

* * * * *

(c) *Electronic filing*. Except as provided in § 2520.104a–2 of this chapter, the Form 5500 ''Annual Return/Report of Employee Benefit Plan'' may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the trust or other entity described in § 2520.104–43(b) maintains an original copy, with all required signatures, as part of the trust's or entity's records.

5. Amend § 2520.103–9 by revising paragraph (d) as follows:

§ 2520.103–9 Direct filing for bank or insurance carrier trusts and accounts.

* * * * *

(d) *Method of filing*. Except as provided in § 2520.104a–2 of this chapter, the Form 5500 ''Annual Return/Report of Employee Benefit Plan'' may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the bank or insurance company which maintains the common or collective trust or pooled separate account maintains an original copy, with all required signatures, as part of its records.

6. Amend § 2520.103–12 by revising paragraph (f) as follows:

§ 2520.103–12 Limited exemption and alternative method of compliance for annual reporting of investments in certain entities.

* * * * *

(f) *Method of filing*. Except as provided in § 2520.104a–2 of this chapter, the Form 5500 ''Annual Return/Report of Employee Benefit Plan'' may be filed electronically or through other media in accordance with the instructions accompanying the form provided the entity described in paragraph (c) of this section maintains an original copy, with all required signatures, as part of its records.

Signed at Washington, DC, this 23d day of August, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 05–17185 Filed 8–29–05; 8:45 am]

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Federal Register

Tuesday,
August 30, 2005

Part VII

The President

Proclamation 7918—Women's Equality Day, 2005

Federal Register
Vol. 70, No. 167
Tuesday, August 30, 2005

Presidential Documents

Title 3—

The President

Proclamation 7918 of August 25, 2005

Women's Equality Day, 2005

By the President of the United States of America

A Proclamation

On August 26, 1920, the 19th Amendment to the Constitution was adopted, guaranteeing American women the right to vote. The passage of this amendment was the culmination of a long struggle that reached back to the founding of the country and was furthered by the 1848 women's rights convention in Seneca Falls, New York. By celebrating Women's Equality Day, we commemorate the adoption of this amendment and honor the visionary women who fought tirelessly for women's suffrage.

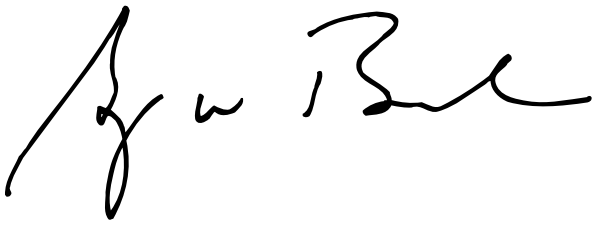
Led by women such as Elizabeth Cady Stanton, Susan B. Anthony, and Lucretia Mott, the suffragists stood up against injustice and persevered until, as Susan B. Anthony wrote, the handful who first took a stand for suffrage grew into an army. The efforts of these pioneers helped secure for American women the right to vote.

Since the adoption of the 19th Amendment, women have continued to make great contributions to our Nation. Women today are leaders in medicine, law, journalism, business, government, and other professions. They are doctors and mothers, teachers and lawyers, homemakers and pilots, artists and entrepreneurs. Women also are serving with great honor in our Armed Forces as we fight a war on terror and defend our freedoms. The hard work of American women is essential to the strength and vitality of our country.

One hundred and fifty-seven years after the Seneca Falls Convention, we continue to work so that all people can enjoy their God-given rights. This Women's Equality Day, as we celebrate the 85th anniversary of the 19th Amendment, we honor the perseverance, leadership, and achievements of the suffragists and all of America's women, and we renew our commitment to equal justice and dignity for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 2005, as Women's Equality Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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Seasons, limits, and shooting hours; establishment, etc.; published 8-30-05

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Government contracting, 8(a) business development, and small business size standard programs; published 8-30-05

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Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

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TRANSPORTATION DEPARTMENT
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Preconstruction procedures; project authorizations and agreements; comments due by 9-9-05; published 7-11-05 [FR 05-13514]

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Hazardous materials:
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Cylinders and multi-element gas containers; design, construction, maintenance, and use; United Nations recommended standards adoption; comment extension; comments due by 9-6-05; published 6-23-05 [FR 05-12459]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3423/P.L. 109–43
Medical Device User Fee Stabilization Act of 2005 (Aug. 1, 2005; 119 Stat. 439)

H.R. 38/P.L. 109–44
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H.R. 481/P.L. 109–45
Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46
To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47
Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48
To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49
Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50
To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building". (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51
To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52
To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53
Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Aug. 2, 2005; 119 Stat. 462)

H.R. 2361/P.L. 109–54
Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55
Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56
To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57
Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

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