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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 AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300, 301, 302, 305, 318, 319, 322, 330, 340, 351, 352, 353, 354, 360, 371, and 380

9 CFR Part 94

[Docket No. 05–012–2]

Noxious Weed Control and Eradication Act; Revisions to Authority Citations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the authority citations in title 7, chapter III, and title 9, part 94, to reflect the enactment of the Noxious Weed Control and Eradication Act of 2004 (Pub. L. 108–412, 118 Stat. 2320, 7 U.S.C. 7781–7786), which amended the Plant Protection Act.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1237; (301) 734–5225.

SUPPLEMENTARY INFORMATION:

Background

In a final rule published in the **Federal Register** on September 23, 2005 (70 FR 55705–55706, Docket No. 05–012–1), the Secretary of Agriculture delegated to the Animal and Plant Health Inspection Service (APHIS) the authority to carry out the Noxious Weed Control and Eradication Act of 2004, (Pub. L. 108–412, 118 Stat. 2321, 7 U.S.C. 7781–7786). In that final rule, we also stated our intent to further amend titles 7 and 9 of the Code of Federal Regulations (referred to below as the regulations) in a separate rulemaking action to reflect the Plant Protection Act amendment in our authority citations. This final rule makes those changes to the authority citations.

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Order 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects

7 CFR Parts 300, 301, 302, 305, 318, 319, 322, 330, 340, 351, 352, 353, 354, 360, 371, and 380

Administrative practice and procedure, Agricultural commodities, Animal diseases, Authority delegations (Government agencies), Bees, Biotechnology, Coffee, Cotton, Cottonseeds, Customs duties and inspection, District of Columbia, Exports, Fruits, Genetic engineering, Government employees, Guam, Hawaii, Honey, Imports, Irradiation, Logs, Nursery stock, Organization and functions (Government agencies), Packaging and containers, Phytosanitary treatment, Plant diseases and pests, Plants (Agriculture), Postal Service, Puerto Rico, Quarantine, Reporting and recordkeeping requirements, Rice, Transportation, Travel and transportation expenses, Vegetables, Virgin Islands, Weeds.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 7 CFR parts 300, 301, 302, 305, 318, 319, 322, 330, 340, 351, 352, 353, 354, 360, 371, and 380, and 9 CFR part 94 as follows:

PART 300—INCORPORATION BY REFERENCE

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

PART 301—DOMESTIC QUARANTINE NOTICES

■ 2. The authority citation for part 301 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

PART 302—DISTRICT OF COLUMBIA; MOVEMENT OF PLANT AND PLANT PRODUCTS

■ 3. The authority citation for part 302 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

PART 305—PHYTOSANITARY TREATMENTS

■ 4. The authority citation for part 305 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

■ 5. The authority citation for part 318 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

PART 319—FOREIGN QUARANTINE NOTICES

■ 6. The authority citation for part 319 is revised to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

PART 322—BEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT

■ 7. The authority citation for part 322 is revised to read as follows:

Authority: 7 U.S.C. 281; 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

■ 8. The authority citation for part 330 is revised to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

■ 9. The authority citation for part 340 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

PART 351—IMPORTATION OF PLANTS OR PLANT PRODUCTS BY MAIL

■ 10. The authority citation for part 351 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Cross Reference: For customs regulations governing importation of plants and plant products, see 19 CFR part 12.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

■ 11. The authority citation for part 352 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

PART 353—EXPORT CERTIFICATION

■ 12. The authority citation for part 353 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

PART 354—OVERTIME SERVICES RELATED TO IMPORTS AND EXPORTS; AND USER FEES

■ 13. The authority citation for part 354 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

PART 360—NOXIOUS WEED REGULATIONS

■ 14. The authority citation for part 360 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

■ 15. The authority citation for part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 16. In § 371.3, paragraph (b)(2)(x) is amended by removing the citation ''7 U.S.C. 7701–7772'' and adding the citation ''7 U.S.C. 7701–7772 and 7781–7786'' in its place.

PART 380—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

■ 17. The authority citation for part 380 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 16 U.S.C. 1540(a), 3373(a) and (b); 7 CFR 2.22, 2.80, and 371.3.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 18. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 29th day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19945 Filed 10–4–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 355

[Docket No. 04–137–1]

Protected Plant Permits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the endangered species regulations concerning terrestrial plants by replacing all references to ''general permits'' with references to ''protected plant permits.'' This final rule is necessary for the regulations to reflect the change in the name of the permit. We are also updating a mailing address in the regulations and making other nonsubstantive editorial changes.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Jennings, Regulatory Permit Specialist, Permit Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–7472.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 355, ''Endangered Species Regulations Concerning Terrestrial Plants'' (referred to below as the regulations), pertain to the importation, exportation, or reexportation of terrestrial plants that are listed as endangered or threatened in the Endangered Species Act (referred to below as the Act). Section 355.11 requires any person wishing to import, export, or reexport plants listed in the Act to obtain a general permit by following the application procedure described in that section.

The name of the general permit has been changed to ''protected plant permit.'' We are amending the regulations to reflect the new name. As part of that change, we are adding a definition of *protected plant permit* that provides the permit's form number and complete name. This new definition serves the same purpose as footnote 3 in § 355.11, so we are removing that footnote and redesignating the remaining footnotes in part 355 accordingly.

We are also updating the address to which permit applications are submitted, adding an Internet address and telephone number that can be used to obtain a permit application, and correcting a misspelling.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12866 and 12988. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 355

Endangered and threatened species, Exports, Imports, Law enforcement, Plants (Agriculture), Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 355 is amended as follows:

PART 355—ENDANGERED SPECIES REGULATIONS CONCERNING TERRESTRIAL PLANTS

■ 1. The authority citation for part 355 continues to read as follows:

Authority: 16 U.S.C. 1532, 1538, and 1540; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 355.2 is amended by adding, in alphabetical order, a definition of *protected plant permit* to read as follows.

§ 355.2 Definitions.

* * * * *

Protected plant permit. PPQ Form 622, ''Protected Plant Permit to Engage in the Business of Importing, Exporting, or Reexporting Terrestrial Plants Regulated by 50 CFR 17.12 and 23.23.''

* * * * *

§ 355.10 [Amended]

■ 3. Section 355.10 is amended by removing the word ''general'' and adding the words ''protected plant'' in its place.

■ 4. Section 355.11 is amended as follows:

■ a. By removing footnote 3 and revising the section heading and the introductory text of paragraph (b) to read as set forth below.

■ b. By removing the word ''general'' and adding in its place the words ''protected plant'' in the following places:

i. Paragraph (a).

ii. Paragraph (b).

iii. Paragraph (c).

iv. Paragraph (d), both times it appears.

v. Paragraph (e), all three times it appears.

vi. Paragraph (h), all three times it appears.

vii. Paragraph (i)(1), first sentence, both times it appears.

viii. Paragraph (i)(2), introductory text, both times it appears.

■ c. In paragraph (b)(5), by correcting the word ''similiar'' to read ''similar''.

§ 355.11 Protected plant permits.

* * * * *

(b) An application for a protected plant permit shall be submitted to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Services, 4700 River Road Unit 133, Riverdale, MD 20737–1236. The completed application shall include the following information: [3]

* * * * *

§ 355.20 [Amended]

■ 5. In § 355.20, footnote 5 is redesignated as footnote 4.

§ 355.22 [Amended]

■ 5. In § 355.22, footnote 6 is redesignated as footnote 5.

Done in Washington, DC, this 29th day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19944 Filed 10–4–05; 8:45 am]

BILLING CODE 3410–34–P

[3] Application forms are available on the Internet (*http://www.aphis.usda.gov/ppq/permits*), by calling (877) 770–5990, or by writing to the address in this paragraph. Application forms may also be obtained from local offices at any of the ports designated in 50 CFR part 24. Telephone numbers and addresses of local offices are listed in telephone directories.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV05–979–2 IFR]

Melons Grown in South Texas; Continued Suspension of Handling and Assessment Collection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule continues in effect indefinitely a suspension of the minimum grade, quality, maturity, container, pack, inspection, assessment collection, and other related requirements prescribed under the South Texas melon (cantaloupes and honeydews) marketing order (order). It also continues in effect a suspension of reporting requirements under the order. These requirements were initially suspended for the 2004–05 fiscal period to allow the South Texas melon industry to evaluate the need for the marketing order. This action also suspends one remaining reporting requirement in effect. The order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). On September 7, 2005, the Committee recommended termination of the order. This rule will relieve handlers of regulatory requirements while the Department of Agriculture (USDA) evaluates the Committee's recommendation to terminate the order.

DATES: Effective October 6, 2005. Comments received by November 4, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Martin J. Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; telephone: (559) 487–5110, Fax: (559) 487–5906; or Kathleen M. Finn, Formal Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect indefinitely a suspension of the minimum grade, quality, maturity, container, pack, inspection, and other related requirements prescribed under the South Texas melon order. For the purposes of this rule, these requirements are referred to as handling requirements. It also continues in effect a suspension of assessment collection and reporting requirements under the order, and suspends one remaining reporting requirement currently in effect concerning planted acreage. An interim final rule published in the **Federal Register** on November 26, 2004 (69 FR 68761), suspended these requirements for the 2004–05 fiscal period to allow the South Texas melon industry evaluate the need for the marketing order. A final rule was published in the **Federal Register** on February 23, 2005 (70 FR 8709). The order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). On September 7, 2005, the Committee recommended termination of the order after a year of evaluation. This rule will relieve handlers of regulatory requirements while USDA evaluates the Committee's recommendation to terminate the order.

Section 979.52 of the order provides authority for grade, size, maturity, quality, and pack regulations for any variety of melons grown in the production area during any period. Section 979.52 also authorizes the modification, suspension, or termination of regulations issued under the order. Authority to terminate or suspend provisions of the order is specified in § 979.84.

Section 979.60 provides that whenever melons are regulated pursuant to § 979.52, such melons must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of such inspection and certification is borne by handlers.

Under the order, fresh market shipments of South Texas melons are required to be inspected and are subject to minimum grade, quality, maturity, and container and pack requirements. Section 979.304 Handling regulation (7 CFR part 979.304) specifies minimum grade and quality requirements for the handling of cantaloupes and honeydew melons. That section also specifies pack and container requirements for these commodities.

Section 979.304 further includes a minimum quantity exemption of 120 pounds per day, and reporting and safeguard requirements for special purpose and experimental shipments. Related provisions appear in the regulations in § 979.106 *Registered handlers*; § 979.152 *Handling of culls*; and § 979.155 *Safeguards*.

At its September 16, 2004, meeting, the Committee unanimously recommended suspending, for the 2004–2005 fiscal period, the handling, assessment collection, and all reporting requirements, except for the acreage planting reporting requirement. The 2004–05 fiscal period began October 1, 2004, and ends September 30, 2005.

These requirements initially were suspended pursuant to a rule published in the **Federal Register** on November 26, 2004 (69 FR 68761). It was believed that the cost of inspection and certification and administering the order may exceed the benefits. The regulations were suspended for one fiscal year so the industry would have time to evaluate whether the order should be continued. Consistent with the suspension of § 979.304, also suspended for the 2004–2005 fiscal year were § 979.106, § 979.152, and § 979.155 of the rules and regulations in effect under the order. Section 979.106 provides for the registration of handlers, § 979.152 details procedures for the handling of cull melons, and § 979.155 provides safeguard requirements for special purpose shipments and establishes reporting and recordkeeping requirements when such exemptions are in place.

In addition, § 979.219 requiring that an assessment rate of $0.09 per carton of melons be collected from South Texas melon handlers was also suspended. Consistent with suspension of § 979.219, § 979.112 specifying late payment charges on delinquent assessments was also suspended.

The Committee met on September 7, 2005, to evaluate the industry situation since the regulations were suspended. Planted acreage continued to decline, from 4,780 acres in 2003–04 to 2,364 acres in 2004–05. The number of melon growers and handlers also continued to decline. During the 2003–04 season, there were 29 growers and 16 handlers; in 2004–05 the number of known growers decreased to 13 and handlers decreased to seven. In addition, no new varieties were introduced to improve the quality and make the product more competitive with product from other producing areas. In short, the industry situation continues to worsen. The Committee believes that there is no longer a need for the order, and therefore recommended its termination. USDA is evaluating the Committee's recommendation.

The first suspension of regulations expires on September 30, 2005. The process to terminate a marketing order takes several months to complete; therefore, this action will continue the suspension of regulations during this process, consistent with the intent of the Committee. This action also suspends the one remaining reporting requirement under the order regarding planted acreage. Because the industry has continued to decline, the Committee believes there is no need to incur any costs or gather any additional data.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

During the 2004–05 marketing year, there were approximately seven handlers of South Texas melons subject to regulation under the marketing order and approximately 13 melon growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2003–04 marketing year, the industry's 16 handlers shipped melons produced on 4,780 acres with the average and median volume handled being 89,012 and 10,655 containers, respectively. In terms of production value, total revenue for the 16 handlers was estimated to be $12,175,919, with the average and median revenues being $760,996 and $91,094, respectively. Complete comparable data is not available for the 2004–05 marketing year, but based on a reduction of acreage from 4,780 acres in 2003–04 to 1,364 acres in 2004–05, and the reduced number of growers and handlers, it follows that the volume handled and the value of production likely declined as well.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternative crops, like onions.

Based on the SBA's definition of small entities, it is estimated that all of the seven handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises might push a number of these handlers above the $6,000,000 annual receipt threshold. Of the 13 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

At its September 16, 2004, meeting, the Committee unanimously recommended suspending, for the 2004–2005 fiscal period, the handling, assessment collection, and all reporting requirements, except for the acreage planting reporting requirement. The Committee requested that the rule be effective for the 2004–05 fiscal period, which began October 1, 2004, and ends September 30, 2005. A rule was published in the **Federal Register** on November 26, 2004, suspending these requirements for the specified period (69 FR 68762). A final rule was published in the **Federal Register** on February 23, 2005 (70 FR 8709).

The objective of the handling and inspection requirements is to ensure that only acceptable quality cantaloupe and honeydew melons enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to growers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived, especially in view of reduced melon acreage and yields in recent years.

The South Texas cantaloupe and honeydew melon industry has been shrinking. South Texas historically had enjoyed a marketing window of approximately six weeks beginning about May 1 each season. That window has steadily eroded in recent years due to strong competition and quality problems in Texas melons. As a result, acreage has decreased dramatically from a high of 27,463 acres in 1987, to 4,780 in 2004, and 1,364 acres in 2005. The number of producers and handlers also has steadily declined.

Underlying economics for the South Texas melon industry did not justify continuing the regulations for 2004–05. Too little assessment revenue could be generated for an effective marketing and promotion program, and buyer demands have superseded the regulations in dictating quality requirements.

Suspending the regulations enabled handlers to ship melons without regard to the minimum grade, quality, maturity, container, pack, inspection, and related requirements for the 2004–05 fiscal period. It decreased industry expenses associated with inspection and assessments.

In addition, this rule also suspended, for the 2004–05 marketing year, § 979.219 requiring that an assessment rate of $0.09 per carton of melons be collected from South Texas melon handlers. Consistent with suspension of § 979.219, § 979.112 specifying late payment charges on delinquent assessments was also suspended. Authorization to assess melon handlers enables the Committee to incur expenses that are necessary to administer the marketing order.

With the suspension of handling, inspection, and assessment requirements, a limited Committee budget was needed for program administration and collection of acreage planting reports. For the period of the suspension, the Committee recommended a reduced budget of $70,959 to cover anticipated expenses. Adequate funds to cover these expenses were provided from the Committee's reserves.

The Committee anticipated that suspending the regulations would not negatively impact small businesses. The suspension applied to minimum grade, quality, maturity, container, pack, inspection, assessment collection, some reporting, and other related requirements. Further, this rule allowed handlers and growers the choice to obtain inspection for melons, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of South Texas melons during the 2003–04 marketing season was $46,000. These costs were not incurred during the 2004–2005 season.

The suspension of the assessment collection requirements for the 2004–05 season also resulted in some cost savings. Assessment collections during the 2003–04 season totaled $102,988. As a result of the suspension of § 979.219, no assessments were collected during the 2004–05 season.

At its September 16, 2004, meeting, the Committee considered suspension of the marketing order, but wished to continue receiving data on plantings for a one-year period before deciding whether the order should be continued.

The Committee met on September 7, 2005, to evaluate the industry situation since the regulations were suspended. Planted acreage continued to decline, from 4,780 acres in 2003–04 to 2,364 acres in 2004–05. The number of melon growers and handlers also continued to decline. During the 2003–04 season, there were 29 growers and 16 handlers; in 2004–05 the numbers decreased to 13 and seven, respectively. In addition, no new varieties were introduced to improve the quality and make South Texas melons more competitive with other producing areas.

The Committee believes that there is no longer a need for the order, and therefore recommended its termination. USDA is evaluating the Committee's recommendation. The first suspension of regulations expires on September 30,

2005. Therefore, this action will continue the suspension of regulations indefinitely as USDA evaluates the Committee's recommendation to terminate the order.

This action also suspends the one remaining reporting requirement under the order regarding planted acreage. Because the industry has continued to decline, the Committee believes there is no need to incur any costs or gather any additional data.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. Suspension of all the reporting requirements under the order is expected to reduce the reporting burden on small or large South Texas melon handlers by 24.90 hours, and should further reduce industry expenses. Handlers are no longer required to file any forms with the Committee. This rule will, thus, not impose any additional reporting or recordkeeping requirements on either small or large melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 16, 2004, meeting and the September 7, 2005 meeting were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on continued suspension of the handling, assessment collection, and all reporting regulations currently prescribed under the South Texas melon marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulations suspended by this interim final rule, as hereinafter set forth, no longer tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The rule continues to suspend the handling, assessment collection, reporting requirements, and related regulations for South Texas melons indefinitely; (2) termination of the order was recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) South Texas melon handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule. For these same reasons, a thirty-day comment period is deemed appropriate for interested persons to comment.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In part 979, §§ 979.106, 979.112, 979.152, 979.155, 979.180, 979.219, and 979.304 are suspended indefinitely in their entirety effective October 6, 2005.

Dated: October 3, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20088 Filed 10–3–05; 12:38 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22585; Directorate Identifier 2005–NM–041–AD; Amendment 39–14328; AD 2005–20–31]

RIN 2120–AA64

Airworthiness Directives; Honeywell Flight Management System (FMS) One Million Word (1M or 700K) Data Bases (9104 Cycle or Earlier), as Installed in, but Not Limited to, McDonnell Douglas Model MD–11 and MD–11F Airplanes, Boeing Model 747–400 Series Airplanes, and Boeing Model 757 and 767 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission; request for comments.

SUMMARY: The FAA is rescinding an existing airworthiness directive (AD) that applies to Honeywell FMS one million word (1M or 700K) data bases (9104 cycle or earlier) as installed in, but not limited to McDonnell Douglas Model MD–11 and MD–11F airplanes, Boeing Model 747–400 series airplanes, and Boeing Model 757 and 767 airplanes. That AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) and installation of a placard to prohibit the use of Nondirectional Beacon (NDB) approaches for landing. That AD was prompted by an anomaly in the Honeywell FMS one million word (1M or 700K) data bases (9104 cycle or earlier). We issued that AD to prevent an airplane deviating from the published approach to the runway, which could lead to premature ground contact before reaching the runway. Since we issued that AD, we have determined that the Honeywell FMS one million word (1M or 700K) databases (9104 cycle or earlier) no longer exist on any of the affected airplanes.

DATES: This AD becomes effective October 5, 2005.

We must receive comments on this AD by December 5, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-Wide Rulemaking Web site: Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On May 30, 1991, the FAA issued AD 91–08–51, amendment 39–7031 (56 FR 26610, June 10, 1991) (originally issued on April 5, 1991, as telegraphic AD T91–08–51). That AD applies to certain McDonnell Douglas Model MD–11 airplanes, and Boeing Model 747–400, 757, and 767 series airplanes. That AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) and installation of a placard to prohibit the use of Nondirectional Beacon (NDB) approaches for landing. That action was prompted by an anomaly in the Honeywell Flight Management System (FMS) one million word (1M or 700K) data bases (9104 cycle or earlier). The actions required by that AD are intended to prevent an airplane deviating from the published approach to the runway, which could lead to premature ground contact before reaching the runway.

Actions Since Previous AD Was Issued

In February 2004, the FAA Office of Rulemaking (ARM–20) asked the public to tell us which regulations we should amend, eliminate, or simplify. We received about 100 comments from more than 30 commenters. One of the comments was on AD 91–08–51. The commenter stated that the navigational databases are upgraded monthly and no flight crew will be using a 13-year-old navigational database today.

We agree with the commenter that AD 91–08–51 is no longer necessary and therefore we will rescind the AD. We have received confirmation from the airplane and equipment manufacturers that the Honeywell FMS one million word (1M or 700K) databases (9104 cycle or earlier) no longer exist on any of the affected airplanes worldwide.

FAA's Determination

Upon further consideration, we have determined that we need to rescind AD 91–08–51 to eliminate an unnecessary regulation. Operators may remove the AFM revision and the placard that prohibit the use of NDB approaches for landing.

Since this action rescinds a requirement to perform an unnecessary action, it has no adverse economic impact and imposes no additional burden on any person. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Explanation of Change to Applicability

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

Comments Invited

Although this is a final rule that was not preceded by notice and an opportunity for public comment, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22585; Directorate Identifier 2005–NM–041–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Rescission

■ Accordingly, according to the authority delegated to me by the Administrator, the FAA proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding an airworthiness directive (AD) that removes amendment 39–7031 (56 FR 26610, June 10, 1991), to read as follows:

2005–20–31 Honeywell: Amendment 39–14328. Docket No. FAA–2005–22585; Directorate Identifier 2005–NM–041–AD. Rescinds AD 91–08–51, Amendment 39–7031.

Effective Date

(a) This AD becomes effective October 5, 2005.

Affected ADs

(b) This action rescinds AD 91–08–51.

Applicability

(c) This action applies to Honeywell Flight Management System (FMS) one million word (1M or 700K) data bases (9104 cycle or earlier), as installed in, but not limited to, McDonnell Douglas Model MD–11 and MD–11F airplanes, and Boeing Model 747–400 series airplanes, Model 757–200, –200PF, –200CB, and –300 series airplanes, and Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19938 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22584; Directorate Identifier 2005–NM–044–AD; Amendment 39–14313; AD 2004–19–06 R1]

RIN 2120–AA64

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

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD) that applies to all Boeing Model 767–200, –300, and –300F series airplanes. The existing AD currently requires inspections to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station 955 and the skin; and follow-on/corrective actions. The existing AD results from reports of cracked and/or corroded fail-safe straps at body station (BS) 955 on Boeing Model 767–200 series airplanes. We issued the existing AD to detect and correct fatigue cracking or corrosion of the fail-safe straps, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage. This new AD revises the applicability of the existing AD to reduce the number of affected airplanes. We are issuing this AD to detect and correct fatigue cracking or corrosion of the fail-safe straps, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

DATES: The effective date of this AD is November 1, 2004.

On November 1, 2004 (69 FR 57636, September 27, 2004), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–53A0100, dated September 26, 2002.

We must receive comments on this AD by December 5, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-Wide Rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On September 13, 2004, we issued AD 2004–19–06, amendment 39–13800 (69 FR 57636, September 27, 2004). That AD applies to all Boeing Model 767–200, –300, and –300F series airplanes. That AD requires inspections to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station (BS) 955 and the skin; and follow-on/corrective actions. That AD resulted from reports of cracked and/or corroded fail-safe straps at BS 955 on Boeing Model 767–200 series airplanes. The actions specified in that AD are intended to detect and correct fatigue cracking or corrosion of the fail-safe straps, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

Actions Since AD Was Issued

Since we issued that AD, the manufacturer, Boeing, developed a production change that lowers the maximum stress in the fail-safe strap and removes the critical location where cracks were occurring on Boeing Model 767–200, –300, and –300F series airplanes. The production change is applicable to airplanes having line numbers 932 and subsequent. Therefore, we have revised the applicability of AD 2004–19–06 to Boeing Model 767–200, –300, and –300F series airplanes, line numbers 1 through 931 inclusive.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design that may be registered in the U.S. at some time in the future. For this reason, we are issuing this AD to detect and correct fatigue cracking or corrosion of the fail-safe straps, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage. This AD continues to require inspections to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station 955 and the skin; and follow-on/corrective actions. This AD also revises the applicability of the existing AD to exclude line numbers 932 and subsequent.

Explanation of Change Made to This AD

Boeing Commercial Airplanes has received a Delegation Option Authorization (DOA). We have revised this AD to delegate the authority to approve an alternative method of

compliance for any repair required by this AD to an Authorized Representative for the Boeing Commercial Airplanes DOA rather than a Designated Engineering Representative (DER).

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

Costs of Compliance

There are approximately 833 airplanes of the affected design in the worldwide fleet. We estimate that 354 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $46,020, or $130 per airplane, per inspection cycle.

FAA's Determination of the Effective Date

On April 18, 2005, the Seattle Aircraft Certification Office granted an alternative method of compliance (AMOC) with the requirements of AD 2004–19–06 for airplanes having line numbers 932 and subsequent. That AMOC terminates the requirements of AD 2004–19–06 for those airplanes. This AD clarifies that the applicability of AD 2004–19–06 is only for airplanes having line numbers 1 through 931 inclusive. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include "Docket No. FAA–2005–22584; Directorate Identifier 2005–NM–044–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13800 (69 FR 57636, September 27, 2004) and adding the following new airworthiness directive (AD):

2004–19–06 R1 Boeing: Amendment 39–14313. Docket No. FAA–2005–22584; Directorate Identifier 2005–NM–044–AD.

Effective Date

(a) The effective date of this AD is November 1, 2004.

Affected ADs

(b) This AD revises AD 2004–19–06.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category; line numbers 1 through 931 inclusive.

Unsafe Condition

(d) This AD results from reports of cracked and/or corroded fail-safe straps at body station (BS) 955 on Boeing Model 767–200 series airplanes. We are issuing this AD to detect and correct fatigue cracking or corrosion of the fail-safe straps, which could

result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

Compliance

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

Inspections and Follow-On/Corrective Actions

(f) Except as provided by paragraph (g) of this AD, prior to the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after November 1, 2004 (the effective date of AD 2004–19–06), whichever occurs later, perform a detailed inspection and eddy current inspection to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at BS 955 and the skin, per Figure 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0100, dated September 26, 2002.

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

(1) If no crack or corrosion is found, repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles or 36 months, whichever occurs first.

(2) If any crack or corrosion is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with paragraph (h)(2) of this AD.

(g) For airplanes on which the fail-safe strap has been replaced before November 1, 2004: Do the actions required by paragraph (f) of this AD within 12,000 flight cycles after accomplishing the replacement.

Note 2: Steps 2 and 8 of the Work Instructions of Boeing Alert Service Bulletin 767–53A0100, dated September 26, 2002, refer incorrectly to 767 Airplane Maintenance Manual (AMM) 32–00–20 for opening the MLG doors; the correct reference is 767 AMM 32–00–15, which is referred to in steps 3 and 7 of the Work Instructions. Step 2 also should state ''Open Main Landing Gear (MLG) doors'' instead of ''Open Main Landing Green (MLG) doors.''

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 767–53A0100, dated September 26, 2002, to perform the actions that are required by this AD, unless the AD specifies otherwise. On November 1, 2004 (69 FR 57636, September 27, 2004), the Director of the Federal Register approved the incorporation by reference of this document. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19939 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21085; Directorate Identifier 2004–NM–252–AD; Amendment 39–14307; AD 2005–20–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This AD requires a one-time inspection of the lower lobe frames of body section 43 to find open holes between stringers 17L and 17R and to record their location; repetitive high frequency eddy current (HFEC) inspections for cracks of all open holes; and related investigative and corrective actions if necessary. This AD also includes an optional terminating action of installing rivets in all open tooling holes and all unused lining holes, which would terminate the repetitive open-hole HFEC inspections once a hole is plugged with a rivet. This AD results from reports of cracks at open tooling holes in the lower lobe frames of body section 43. We are issuing this AD to detect and correct cracks in the frames, which could result in cracks in the skin panels and rapid decompression of the airplane.

DATES: This AD becomes effective November 9, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 9, 2005.

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 727 airplanes. That NPRM was published in the **Federal Register** on May 2, 2005 (70 FR 22618). That NPRM proposed to require a one-time inspection of the lower lobe frames of body section 43 to find open holes between stringers 17L and 17R and to record their location; repetitive high frequency eddy current (HFEC) inspections for cracks of all open holes; and related investigative and corrective actions if necessary. That NPRM also

proposed to include an optional terminating action of installing rivets in all open tooling holes and all unused lining holes, which would terminate repetitive open-hole HFEC inspections once a hole is plugged with a rivet.

Comments

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

Request To Clarify the Frequency of the General Visual Inspection

Two commenters request that we clarify the frequency of the general visual inspection. The commenters point out that the summary of the NPRM specifies a one-time inspection, but this inspection is not clearly explained in either the preamble or the body of the NPRM. The commenters state that the general visual inspection of all body section 43 frames between stringers 17L and 17R is needed only one time to identify and record all locations of open holes, including liner attachment holes. If repeat inspections are needed, the record of the hole locations will indicate exactly where open holes are located.

We agree with the commenters. Both the NPRM and Boeing Alert Service Bulletin 727–53A0227, dated September 16, 2004 (which was cited as the applicable source of service information for the actions in the NPRM), are unclear about the frequency of the general visual inspection. The compliance table in paragraph 2.E. ''Compliance'' of the service bulletin states that the general visual inspection is to be repetitive. Figures 1 through 5 of the service bulletin instruct operators to record the locations of all open holes and to keep this information. We understood that, once all the open hole locations were identified and recorded, repeating the general visual inspection would not be necessary. This is not clear in the NPRM. Therefore, we have revised paragraph (g) of the final rule to clarify that the general visual inspection is a one-time inspection, and the HFEC inspection is repetitive. We have also clarified the Summary section to reflect this change. These changes do not increase the scope of the NPRM since these actions were already specified in the service bulletin and the NPRM specified to do all inspections in accordance with the service bulletin.

Request To Remove Requirement To Inspect Certain Open Holes Previously Modified

The commenter, the airplane manufacturer, requests that we specify that open holes used for lining attachments (liner attach holes) are not subject to the repetitive inspection requirements proposed in the NPRM if the terminating modification of AD 90–20–14, amendment 39–6730 (55 FR 37864, September 14, 1990), was accomplished for that hole. The commenter states that the proposed actions in the NPRM and the requirements of AD 90–20–14 conflict. AD 90–20–14 provides for the installation of a reinforcement angle and strap along the inner flange of the lower lobe frames in body section 43, which is terminating action for the repetitive inspections of in-use liner attach holes in that AD. The commenter states that the NPRM, as written, would require repeat inspections of all open liner attach holes, regardless of whether or not these reinforcement angles and straps are installed. The manufacturer has not received any reports of cracking at in-use liner attach holes in frames that have the reinforcements installed in accordance with AD 90–20–14, and the commenter contends that HFEC repetitive inspections are not necessary if these reinforcements are installed. The commenter also notes that the HFEC inspections specified in Boeing Alert Service Bulletin 727–53A0227 are an alternative method of compliance (AMOC) with the inspections required by paragraph A. of AD 90–20–14 and are the preferred method of inspection.

We partially agree with the commenter. We agree that it is not necessary to accomplish the repetitive inspections specified in paragraph (g) of the NPRM for in-use liner attach holes where the frame has been reinforced in accordance with AD 90–20–14. We agree with the commenter's technical justification. We disagree with completely eliminating all inspections of in-use liner attach holes. Boeing Service Bulletin 727–53–0068, Revision 4, dated September 14, 1989, which is cited as the applicable source of service information for the actions in AD 90–20–14, specifies post-modification inspections of the in-use liner attach holes with the frame reinforcement modification installed. We have added a new paragraph (j) and Table 1 to the final rule to specify that repetitive inspection intervals for in-use liner attach holes are extended where the frame has been reinforced in accordance with AD 90–20–14. We have re-identified subsequent paragraphs accordingly.

Explanation of Additional Changes

We have simplified paragraph (h)(2) of the final rule by referring to paragraph (k) of the final rule for repair methods.

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

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

Conclusion

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

Costs of Compliance

There are about 1,038 airplanes of the affected design in the worldwide fleet. This AD affects about 616 airplanes of U.S. registry. The inspection takes between 8 and 15 work hours per airplane per inspection cycle, depending on the configuration of the airplane. The average labor rate is $65 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is between $320,320 and $600,600, or between $520 and $975 per airplane, per inspection cycle.

For operators that choose to do the optional terminating action of installing rivets in all open tooling holes and all unused lining holes, the actions take between 13 and 23 work hours per airplane, depending on the configuration of the airplane. The average labor rate is $65 per work hour. Based on these figures, the estimated cost of the optional terminating action is between $845 and $1,495 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–13 Boeing: Amendment 39–14307. Docket No. FAA–2005–21085; Directorate Identifier 2004–NM–252–AD.

Effective Date

(a) This AD becomes effective November 9, 2005.

Affected ADs

(b) Accomplishing the inspections in paragraph (g) of this AD is an alternative method of compliance (AMOC) for the inspections required by paragraph A. of AD 90–20–14, amendment 39–6730, if accomplished in accordance with the requirements of paragraph (k)(2) of this AD.

Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracks at open tooling holes in the lower lobe frames of body section 43. We are issuing this AD to detect and correct cracks in the frames, which could result in cracks in the skin panels and rapid decompression of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0227, dated September 16, 2004.

Inspections

(g) Before the accumulation of 40,000 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever occurs later: Do a one-time general visual inspection of the lower lobe frames to find open holes between stringer 17L and stringer 17R of body section 43, record their locations, and keep these records for future reference when accomplishing the actions in this AD; and do a high-frequency eddy current (HFEC) inspection for cracks of all open holes, including lining holes. Repeat the HFEC inspection at intervals not to exceed 3,500 flight cycles until the optional terminating action in paragraph (i) of this AD is accomplished. Do all inspections in accordance with the service bulletin.

Corrective Action

(h) If any crack is found during any inspection required by paragraph (g) or (j) of this AD: Before further flight, do the applicable corrective action in paragraph (h)(1) or (h)(2) of this AD.

(1) If the crack is less than 0.063 inch in length, do the corrective action and related investigative action in Figure 6 of the service bulletin.

(2) If the crack is 0.063 inch in length or greater, repair the crack using a method approved in accordance with paragraph (k) of this AD. Chapters 51–40–3 and 53–10–4 of the Boeing 727 Structural Repair Manual (SRM) are approved methods. Except for these SRMs, for a repair method to be approved, the approval must specifically reference this AD.

Optional Terminating Action

(i) Installing rivets in all open tooling holes, and all unused lining holes, according to Part 2 of the Work Instructions of the service bulletin terminates the repetitive inspection requirements of paragraph (g) of this AD only for those holes plugged with rivets. Terminating action for the repetitive inspection requirements of paragraph (g) of this AD is not permitted for all lining holes without installed rivets, except as provided by paragraph (j) of this AD.

Extended Intervals for Repetitive HFEC Inspections

(j) For open holes that are in use for lining installation only: Doing the applicable actions in Table 1 of this AD extends the intervals of the repetitive HFEC inspections required by paragraph (g) of this AD.

TABLE 1.—EXTENDED INTERVALS FOR REPETITIVE HFEC INSPECTIONS

If the modification specified in paragraph C. of AD 90–20–14—	Then—
(1) Was done before the effective date of this AD.	Do the initial HFEC inspection required by paragraph (g) of this AD at the time specified in that paragraph. Do the repetitive HFEC inspections required by paragraph (g) of this AD thereafter at intervals not to exceed 20,000 flight cycles.
(2) Has not been done before the effective date of this AD.	Do the modification specified in paragraph C. of AD 90–20–14 at the same time as the initial HFEC inspection required by paragraph (g) of this AD, and repeat the HFEC inspection thereafter at intervals not to exceed 20,000 flight cycles.

AMOCs

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) The inspection methods specified in paragraph (g) of this AD are AMOCs to the inspection methods required by paragraph A. of AD 90–20–14, amendment 39–6730. Inspection thresholds and repetitive intervals are not included in or affected by this AMOC. All other provisions of AD 90–20–14 that are not specifically mentioned above remain fully applicable and must be met.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an

Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

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

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 727–53A0227, dated September 16, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19842 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21138; Directorate Identifier 2004–NM–131–AD; Amendment 39–14310; AD 2005–20–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, and –200C series airplanes. This AD requires a one-time detailed inspection for cracking of the lugs of the inboard attach fittings of the wing leading edge slat tracks at slat numbers 2 and 5; prior or concurrent actions for certain airplanes; repetitive high-frequency eddy current (HFEC) inspections for cracking of the lug surfaces of those inboard attach fittings if necessary; and replacement of the attach fittings with new, improved fittings. This AD results from reports of damage to the lugs of certain inboard attach fittings of the leading edge slat tracks. We are issuing this AD to prevent a lifted slat, which, if the airplane performs any non-normal maneuver during takeoff or landing at very high angles of attack, could lead to the loss of the slat and reduced control of the airplane.

DATES: This AD becomes effective November 9, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 9, 2005.

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

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 737–100, –200, and –200C series airplanes. That NPRM was published in the **Federal Register** on May 9, 2005 (70 FR 24335). That NPRM proposed to require a one-time detailed inspection for cracking of the lugs of the inboard attach fittings of the wing leading edge slat tracks at slat numbers 2 and 5; prior or concurrent actions for certain airplanes; repetitive high-frequency eddy current (HFEC) inspections for cracking of the lug surfaces of those inboard attach fittings if necessary; and replacement of the attach fittings with new, improved fittings.

Comments

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

Support for the NPRM

One commenter, the manufacturer, concurs with the content of the NPRM.

Request To Disallow Use of Aluminum Attach Fittings

One commenter requests that we revise the NPRM to prohibit replacing aluminum attach fittings with new aluminum fittings after the effective date of the AD. The commenter provides no justification for this request.

We do not agree with this request. The manufacturer recommends that, unless cracked, an aluminum attach fitting need not be replaced until 120 months or 30,000 flight cycles, whichever comes first, after the effective date of the AD. We have determined that the manufacturer recommendation is sound and that the repetitive inspections of the aluminum fittings required by the AD are sufficient to maintain safety until the aluminum fittings are removed from service. We have not changed the AD in this regard.

Explanation of Change Made to This AD

We have revised the ''Alternative Methods of Compliance (AMOCs)'' paragraph in this AD to clarify the delegation authority for Authorized Representatives for the Boeing Commercial Airplanes Delegation Option Authorization.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

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

Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes

will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD will affect about 909 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Detailed inspection	1	$65	None	$65	522	$33,930.
HFEC inspection	4	65	None	$260, per inspection cycle	522	$135,720, per inspection cycle.
Replace fitting	2	65	$1,674	$1,804	522	$941,688.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–16 Boeing: Amendment 39–14310. Docket No. FAA–2005–21138; Directorate Identifier 2004–NM–131–AD.

Effective Date

(a) This AD becomes effective November 9, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, and –200C series airplanes; line numbers 1 through 1585 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of damage to the lugs of certain inboard attach fittings of the leading edge slat tracks. We are issuing this AD to prevent a lifted slat, which, if the airplane performs any non-normal maneuver during takeoff or landing at very high angles of attack, could lead to the loss of the slat and reduced control of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–57–1273, Revision 2, dated October 30, 2003; unless otherwise specified in this AD.

Inspections

(g) Prior to the accumulation of 7,000 total flight cycles or within 12 months after the effective date of this AD, whichever occurs later, perform a one-time detailed inspection for cracking and damage of the inboard attach fittings at slats 2 and 5 of the wing leading edge in accordance with the service bulletin.

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

(1) If any crack or damage is found, replace the cracked inboard attach fitting in accordance with paragraph (h) of this AD.

(2) If no crack or damage is found, within 4,500 flight cycles or 18 months after the detailed inspection required by paragraph (g) of this AD, whichever occurs first, perform a high-frequency eddy current (HFEC) inspection for cracking of the lugs of the inboard attach fittings in accordance with the service bulletin. If no crack is found, repeat the HFEC inspection at intervals not to exceed 4,500 flight cycles.

Replacement of Fittings

(h) Replace the aluminum inboard attach fittings with new, improved steel fittings at the applicable compliance time in paragraph (h)(1) or (h)(2) of this AD in accordance with the service bulletin. Replacement of any aluminum fitting with a new, improved steel fitting terminates the one-time detailed inspection and the repetitive HFEC

inspections required by paragraph (g) of this AD for that fitting.

(1) If any crack or damage is found during any inspection required by paragraphs (g) or (i) of this AD, before further flight.

(2) If no crack or damage is found during any inspection required by paragraph (g) or (i) of this AD, within 30,000 flight cycles or within 120 months after the effective date of this AD, whichever occurs first.

Concurrent Service Bulletin

(i) For airplanes listed in Group 2 of the service bulletin: Prior to or during the one-time detailed inspection for cracking or damage required by paragraph (g) of this AD or during replacement of the fitting required by paragraph (h) of this AD, whichever occurs first, perform a detailed inspection on slats 2 and 5 for interference of the slat tab support clips with the slat track attach fittings and trim the support clips to eliminate any interference with the attach fittings as applicable; in accordance with Figure 3 of the Accomplishment Instructions of Boeing Service Bulletin 737–57–1080, Revision 3, dated September 24, 1992; and replace any cracked or damaged aluminum attach fitting with a new, improved steel fitting in accordance with paragraph (h) of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(j) Actions accomplished before the effective date of this AD in accordance with Boeing Service Bulletin 737–57–1080, dated September 10, 1973; Revision 1, dated February 25, 1983; or Revision 2, dated August 24, 1989; are considered acceptable for compliance with the corresponding actions specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplane Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

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

Material Incorporated by Reference

(l) You must use Boeing Special Attention Service Bulletin 737–57–1273, Revision 2, dated October 30, 2003; and Boeing Service Bulletin 737–57–1080, Revision 3, dated September 24, 1992; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19871 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20874; Directorate Identifier 2004–NM–279–AD; Amendment 39–14311; AD 2005–20–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319–100 Series Airplanes; Model A320–111 Series Airplanes; Model A320–200 Series Airplanes; and Model A321–100 and –200 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus airplane models, as specified above. This AD requires modifying the parking brake system to automatically restore the normal brake if the parking brake pressure decreases below a certain threshold. This AD results from a report of failure of the parking brake while the airplane was on the holding point of the runway before takeoff, leading to a runway departure. We are issuing this AD to ensure normal braking is available to prevent possible runway departure in the event of failure of the parking brake.

DATES: This AD becomes effective November 9, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 9, 2005.

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

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A319, A320, and A321 series airplanes. That NPRM was published in the **Federal Register** on April 6, 2005 (70 FR 17351). That NPRM proposed to require modifying the parking brake system to automatically restore the normal parking brake if the parking brake pressure decreases below a certain threshold.

Comments

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

Support for the NPRM

Two commenters support the actions required by the NPRM.

Request To Cite Latest Service Information

One commenter asks that we change the NPRM to refer to the latest revision of Airbus Service Bulletin A320–32–1201, which is Revision 02, dated February 1, 2005. Airbus Service Bulletin A320–32–1201, Revision 01, dated May 29, 2002, was referenced in the NPRM as the appropriate source of service information for accomplishing the specified modification. The commenter states that Revision 02

requires additional work be performed on certain aircraft modified per previous issues of the service bulletin. The commenter suggests that Revision 02 be added to paragraph (f) of the NPRM as the source of service information for accomplishing the modification.

We agree with the commenter. We have added Airbus Service Bulletin A320–32–1201, Revision 02, dated February 1, 2005, which is the most current source of service information for accomplishing the modification in this AD, to paragraph (f) of this AD. Although Revision 02 specifies that additional work is necessary, it adds no work to the original issues of the service bulletin; the section specifying additional work was inadvertently carried over from Revision 01 of the service bulletin. Revision 02 merely includes the results of the validation on Model A321 series airplanes and informs operators that the revised bulletin is mandatory. We have added Revision 02 to paragraph (f), added a new paragraph (g) that allows credit for actions done in accordance with Revision 01 of the service bulletin, and re-identified subsequent paragraphs accordingly.

Request To Revise Cost Estimate

One commenter disagrees with the cost estimates specified in the NPRM and states that the FAA has reduced the original estimates for the modification specified in the service bulletin cited in the NPRM by approximately one-half. The commenter adds that Airbus typically underestimates, rather than overestimates, the manpower requirements for repair and modification service bulletins. The commenter recommends that the FAA reconsider using the Airbus average estimate of approximately 45 work hours as a minimum labor cost. The commenter notes that 60 work hours per aircraft is a better estimate to accomplish the referenced modification.

We do not agree that it is necessary to revise the cost estimates of the NPRM, which reflect only the direct costs of the specific required actions based on the best data available from the manufacturer. We recognize that operators may incur incidental costs (such as the time for planning, access and close, and associated administrative actions) in addition to the direct costs. The cost analysis in ADs, however, typically does not include incidental costs. The compliance times in this AD should allow ample time for operators to do the required actions at the same time as scheduled major airplane inspection and maintenance activities, which would reduce the additional time and costs associated with special scheduling. We have not changed the AD in this regard.

Explanation of Change to This AD

In the Summary section of the NPRM we inadvertently specified normal parking brake instead of normal brake, as follows, ''This proposed AD would require modifying the parking brake system to automatically restore the normal parking brake if the parking brake pressure decreases below a certain threshold.'' The correct language for the final rule is ''This AD requires modifying the parking brake system to automatically restore the normal brake if the parking brake pressure decreases below a certain threshold.'' We have corrected the error in this AD.

Explanation of Change to Applicability

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

Conclusion

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

Costs of Compliance

This AD will affect about 357 airplanes of U.S. registry. The modification will take about 23 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $5,600 per airplane. Based on these figures, the estimated cost of the modification for U.S. operators is $2,532,915, or $7,095 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–20–17 Airbus:

Amendment 39–14311. Docket No. FAA–2005–20874; Directorate Identifier 2004–NM–279–AD.

Effective Date

(a) This AD becomes effective November 9, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211 and –231 airplanes; certificated in any category; except those modified in production by Airbus Modification 30062.

Unsafe Condition

(d) This AD was prompted by a report of failure of the parking brake while the airplane was on the holding point of the runway before takeoff, leading to a runway departure. We are issuing this AD to ensure normal braking is available to prevent possible runway departure in the event of failure of the parking brake.

Compliance

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

Modification

(f) Within 52 months after the effective date of this AD: Modify the parking brake system by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–32–1201, Revision 02, dated February 1, 2005.

Modifications Accomplished Per Previous Issue of Service Information

(g) Modifications accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A320–32–1201, Revision 01, dated May 29, 2002; are considered acceptable for compliance with the corresponding modification required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) French airworthiness directive F–2004–137, dated November 10, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A320–32–1201, Revision 02, dated February 1, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on September 26, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19874 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 12, 102, 141, 144, 146, and 163

[CBP Dec. 05–32; USCBP–2005–0009]

RIN 1505–AB60

Country of Origin of Textile and Apparel Products

AGENCY: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs and Border Protection (''CBP'') regulations to update, restructure, and consolidate the regulations relating to the country of origin of textile and apparel products. The interim amendments reflect changes brought about, in part, by the expiration on January 1, 2005, of the Agreement on Textiles and Clothing (''ATC'') and the resulting elimination of quotas on the entry of textile and apparel products from World Trade Organization (''WTO'') members. The primary regulatory change set forth in this document is the elimination of the requirement that a textile declaration be submitted for all importations of textile and apparel products. In addition, to improve the quality of reporting of the identity of the manufacturer of imported textiles and apparel products, the interim amendments include a requirement that importers identify the manufacturer of such products through a manufacturer identification code (''MID'').

DATES: Interim rule effective October 5, 2005; comments must be received by December 5, 2005.

ADDRESSES: You may submit comments, identified by the docket number, by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail, hand delivery or courier: paper, disk or CD–ROM submissions may be mailed or delivered to the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name, document title, and docket number (if available) or Regulatory Information Number (''RIN'') for this rulemaking.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov*. Submitted comments also may be inspected at the Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 799 9th Street, NW. (5th Floor), Washington, DC during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Roberts Abels, Textile Operations, Office of Field Operations (202) 344–1959.

Legal aspects: Cynthia Reese, Tariff Classification and Marking Branch, Office of Regulations and Rulings (202) 572–8812.

SUPPLEMENTARY INFORMATION:

Background

CBP notes initially that in this document, references to the Customs Service or Customs concern the former Customs Service or actions undertaken by the former Customs Service prior to its transfer to the Department of Homeland Security (''DHS'') under the Homeland Security Act and the Reorganization Plan Modification for DHS of January 30, 2003.

On May 9, 1984, the President issued Executive Order 12475 to address a number of problems that had arisen in the context of the U.S. textile import program. These problems included (1) the absence of specific regulatory standards for determining the origin of imported textiles and textile products for purposes of textile agreements and (2) an ever increasing number and variety of instances in which attempts were made to circumvent and frustrate

the objectives of the United States textile import program and the bilateral and multilateral textile agreements negotiated thereunder. Section 1(a) of that Executive Order instructed the Secretary of the Treasury, in accordance with policy guidance from the interagency Committee for the Implementation of Textile Agreements (CITA), to issue regulations governing the entry of textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended (codified at 7 U.S.C. 1854).

In T.D. 85–38, published in the **Federal Register** (50 FR 8710) on March 5, 1985, the Customs Service adopted as a final rule interim amendments to part 12 of the CBP Regulations (19 CFR Part 12), which involved the addition of a new § 12.130 that established criteria to be used in determining the country of origin of imported textiles and textile products for purposes of multilateral or bilateral textile agreements entered into by the United States pursuant to section 204, Agricultural Act of 1956, as amended. In that final rule document, Customs stated that the principles of origin contained in § 12.130 are applicable to merchandise for all purposes. In T.D. 90–17, published in the **Federal Register** (55 FR 7303) on March 1, 1990, which involved a change of practice to conform several previously published Customs positions to certain provisions within 19 CFR 12.130, Customs again stated that the criteria set forth in 19 CFR 12.130 should be used in making country of origin determinations for all CBP purposes.

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act (''URAA''), Public Law 103–465, 108 Stat. 4809. Subtitle D of Title III of the URAA concerns textiles and includes section 334 (codified at 19 U.S.C. 3592). Paragraph (a) of section 334 directed the Secretary of the Treasury to prescribe rules implementing the principles contained in paragraph (b) of section 334 for determining the origin of textile and apparel products. After the enactment of 19 U.S.C. 3592, 7 U.S.C. 1854 was no longer the only statute relevant to the administration of quantitative restrictions on textile products. The principles set forth in section 334 of the URAA for determining the country of origin of textile and apparel products apply for the purposes of the customs laws and the administration of quantitative restrictions, except as otherwise provided for by statute. However, section 334(b)(5) of the URAA excepts from the rules of origin governing textile and apparel products set forth in section 334 goods which, under rulings and administrative practices in effect immediately before the enactment of section 334 (December 8, 1994), would have originated in, or been the growth, product, or manufacture of, Israel.

In T.D. 95–69, published in the **Federal Register** (60 FR 46188) on September 5, 1995, Customs issued final amendments to the CBP regulations (set forth principally at 19 CFR 102.21) to implement the provisions of § 334 of the URAA regarding the country of origin of textile and apparel products. The rules set forth in § 102.21, which became effective for goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, are used to determine the country of origin of textile and apparel products subject to manufacture or processing in all countries, except Israel. With the creation of § 102.21 to implement § 334 of the URAA, the principles of origin set forth in § 12.130 are used for the purpose of determining whether Israel is the country of origin for imported textile and apparel products. If Israel is found not to be the country of origin of a textile or apparel product by application of § 12.130, then the rules set set forth in § 102.21 are used to determine the product's country of origin. However, the application of § 102.21 under these circumstances cannot result in a determination that Israel is the country of origin of the product. See ''Determination of Origin of Textile Goods Processed in Israel,'' General Statement of Policy, published in the **Federal Register** (61 FR 40076) on July 31, 1996.

As § 12.130 exists currently, paragraph (a) defines the scope of textile and textile products subject to section 204, Agricultural Act of 1956, as amended, as including merchandise which is subject to the Multifiber Arrangement Regarding International Trade in Textiles (''MFA'') and identifies such merchandise based on value or weight of specified fibers. Paragraph (b) of § 12.130 sets out the standards for determining the country of origin of a textile or textile product subject to section 204, Agricultural Act of 1956, as amended. It further provides that the procedures set forth in Part 102 are to be used to determine the origin of products of Canada and Mexico as well as the origin of textile and apparel products covered by § 102.21.

Paragraph (c) of § 12.130 sets forth principles for determining the country of origin of certain textiles or textile products that are exported for processing and returned. Paragraph (c)(1) refers to U.S. Note 2, Subchapter II, Chapter 98, HTSUS, and therefore covers products of the United States that are returned after having been advanced in value, improved in condition, or assembled outside the United States. Paragraph (c)(1) provides that those products, upon their return to the United States, may not be considered products of the United States. Paragraph (c)(2) applies the same rule to products of insular possessions of the United States and thus provides that those products, if imported into the United States after having been advanced in value, improved in condition, or assembled outside the insular possessions, are not to be treated as products of those insular possessions.

It is noted that, pursuant to T.D. 00–44, an interpretative rule published in the **Federal Register** (65 FR 42634) on July 11, 2000, CBP no longer applies § 12.130(c) for purposes of country of origin marking of textiles and textile products.

Paragraphs (d) and (e) of § 12.130 set forth factors to consider in determining whether the standard for determining the country of origin of a textile or textile product set out in paragraph (b) has been met. Paragraph (f) of § 12.130 requires the submission of a textile declaration for importations of textiles and textile products subject to section 204, Agricultural Act of 1956, as amended. The textile declaration sets forth information regarding the country of origin of the imported products. Paragraphs (g) and (h) of § 12.130 authorize the port director to require the submission of additional information regarding the origin of textiles and textile products. Paragraph (i) of § 12.130 defines ''date of exportation'' for quota, visa or export license requirements, and statistical purposes, for textiles or textile products subject to section 204 of the Agricultural Act of 1956, as amended.

On January 1, 2005, the Agreement on Textiles and Clothing (''ATC'') expired. The ATC was the successor agreement to the Multifiber Arrangement Regarding International Trade in Textiles (''MFA'') which governed international trade in textiles and apparel through the use of quantitative restrictions. The ATC provided for the integration of textiles and clothing into the General Agreement on Tariffs and Trade (''GATT'') regime over a 10-year transition period. With the conclusion of the 10-year period, the integration was complete and the ATC thus expired. As of January 1, 2005, textiles and apparel products of World Trade Organization members are no longer subject to quantitative restrictions for entry of such products into the United

States. The one exception to this would be for textiles and textile products subject to safeguard actions taken under China's Accession Agreement to the World Trade Organization.

The United States retains bilateral textile agreements with certain countries that are not members of the World Trade Organization. Textile products from these countries remain subject to applicable restraints which are enforced by CBP pursuant to directives from the Chairman of CITA.

By letter dated February 11, 2005, CITA, through its chairman, requested that CBP review the regulations set forth in § 12.130 and recommend appropriate changes in light of the conclusion of the ten-year transition period for the integration of the textiles and apparel sector into GATT 1994 to ensure ongoing enforcement of trade in textiles and apparel. By letter dated February 23, 2005, CBP responded to CITA's request. CITA agreed by letter dated May 4, 2005, that § 12.130 should be amended at this time and responded to the recommendations offered by CBP in response to CITA's solicitation of February 11, 2005. By letter dated July 28, 2005, the Department of the Treasury, pursuant to the authority retained by the Department of the Treasury over the customs revenue functions defined in the Homeland Security Act, and pursuant to section 204 of the Agricultural Act of 1956, as amended, as that authority is delegated by Executive Order 11651 of March 3, 1972, and Executive Order 12475 of May 9, 1984, and in accordance with the policy guidance, recommendation and direction provided by the Chairman of CITA in his letter of May 4, 2005, authorized and directed the Department of Homeland Security to promulgate, as immediately effective regulations, amendments to the CBP regulations regarding the country of origin of textiles and textile products, including changes to the method of reporting information relevant to the origin determination for textile and apparel products.

Discussion of Amendments

With the implementation of the Harmonized Tariff Schedule of the United States (''HTSUS''), the expiration of the MFA and its successor, the ATC, and the enactment of section 334 of the URAA, certain of the provisions of § 12.130 have become out-of-date. Accordingly, CBP in this document is amending its regulations relating to the country of origin of textile and apparel products. In addition to revising and updating the provisions of § 12.130, this document also is re-designating revised § 12.130 as new § 102.22. This will consolidate the rules of origin for textiles and apparel products from all countries in Part 102 of the CBP regulations. As a consequence of relocating the provisions of § 12.130 to Part 102, § 12.130 is removed from the CBP regulations.

It is important to note that in this regulatory package CBP is eliminating the requirement that a textile declaration accompany importations of textiles and apparel products. This will reduce the paperwork burden on importers and is consistent with the movement toward paperless entries. However, pursuant to guidance from CITA and the Department of the Treasury, CBP is amending the CBP regulations to require that importers of textile and apparel products construct the manufacturer's identification code (''MID'') which is declared at the time of entry from the name and address of the entity performing the origin-conferring operations. This requirement will better enable CBP to enforce trade in textile and apparel products.

CBP has closely consulted with CITA in the promulgation of the interim amendments set forth in this document. A discussion of the interim amendments is set forth below.

Section 102.0, which sets forth the scope of Part 102, is amended by including a summary of the provisions that are being relocated from Part 12 to Part 102 pursuant to the amendments promulgated by this document.

Paragraph (a) of § 12.130, which defines the scope of textile or textile products subject to section 204, Agricultural Act of 1956, as amended, includes outdated references to the MFA and to ''chief value.'' This document amends § 12.130(a) by re-designating this paragraph as paragraph (a) of new § 102.22 and by revising the provision to accord with the scope of coverage set forth in § 102.21. Specifically, a cross-reference to the definition of ''textile or apparel products'' in § 102.21(b)(5) is added to § 102.22(a). This will ensure uniformity of coverage between the regulations for determining the origin of textile and apparel products of Israel and the regulations for determining the origin of textile and apparel products of all other countries. Consistent with the above, all references to ''textile or textile product'' in § 12.130 are replaced in new § 102.22 by the words ''textile or apparel product,'' which CBP considers to be synonymous with the former phrase.

Section 12.130(b) is amended by incorporating its provisions into paragraph (a) of new § 102.22 and by clarifying that § 102.22 applies, pursuant to section 334 of the URAA, only to textile and apparel products that are products of Israel.

Paragraph (c) of § 12.130, which concerns the origin of products of the United States and products of insular possessions of the United States that are exported for processing and returned, is removed. In view of the limitation of the origin rules of § 12.130 (now § 102.22) to products of Israel, § 12.130(c) no longer has an appropriate context since it has no relevance to products of Israel. In addition, with the expiration of the ATC, CBP believes this provision is unnecessary.

Paragraphs (d) and (e) of § 12.130 set forth factors to consider in determining whether the standard for determining the country of origin of a textile or textile product set forth in § 12.130(b) (now § 102.22(a)) has been met. Paragraphs (d) and (e) are amended by re-designating these provisions as paragraphs (b) and (c) of new § 102.22, respectively, and by clarifying that these paragraphs are applicable only in determining whether a good is a product of Israel, pursuant to section 334 of the URAA.

Paragraph (f) of § 12.130 is removed. As discussed above, this eliminates the requirement that a textile declaration accompany importations of textiles and textile products subject to section 204, Agricultural Act of 1956, as amended. As stated above, CBP is now requiring importers of textile and apparel goods to include on the CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary), and in all electronic data transmissions that require identification of the manufacturer, a manufacturer's identification code (''MID'') which is derived from the name and address of the entity performing the origin-conferring operations. This requirement will assist CBP in verifying the country of origin of imported textile and apparel products, thereby upholding our international obligations by properly enforcing the international textile restraint agreements to which the United States is a party. CBP is responsible for correctly determining the country of origin of textile and apparel imports to prevent such goods from entering the United States with a false country of origin. The MID requirement will also assist in ensuring that only those textile imports that are eligible to receive preferential trade benefits receive those benefits. As this requirement applies to textile or apparel products from all countries, it is set forth in paragraph (a) of new § 102.23 of the CBP regulations. CBP also is amending Part 102 by adding an

appendix to set forth rules for the proper construction of MIDs.

It is noted that importers of all goods are required to provide a manufacturer or shipper identification code at the time of entry. The MID requirement for textile or apparel goods described above differs from the identification code required for all products only in that the MID must identify the manufacturer of the imported product.

Paragraphs (g) and (h) of § 12.130 concern the circumstances under which CBP may require additional information regarding the origin of imported textile or apparel products and, if admissibility is an issue, deny the release of such products from CBP custody until their country of origin is determined. Paragraphs (g) and (h) are amended by combining the two provisions and re-designating them as paragraph (b) of new § 102.23, and by removing any references to textile declarations. New § 102.23(b) applies to textile or apparel products from all countries.

Paragraph (i) of § 12.130 is amended by re-designating this provision as paragraph (c) of new § 102.23 and by clarifying that this paragraph is applicable only to goods identified in 19 CFR 102.21(b)(5), regardless of the origin of such goods.

A new paragraph (d) is added to new § 102.22 to provide that the rules of origin set forth in § 102.21 are to be used to determine the country of origin of a textile or apparel product if Israel is determined not to be the country of origin of the product under § 102.22. This application of the rules of origin for textile or apparel products is consistent with CBP's practice since the implementation of section 334 of the URAA . See ''Determination of Origin of Textile Goods Processed in Israel,'' General Statement of Policy, published in the **Federal Register** (61 FR 40076) on July 31, 1996.

Conforming changes are also being made in this document to §§ 141.113(b), 144.38(f)(1), and 146.63(d)(1) of the CBP regulations to replace references to ''§ 12.130'' with ''§ 102.21 or § 102.22 of this chapter, as applicable.''

Sections 12.131 and 12.132 set forth certain procedural matters regarding the entry of textiles and textile products in general, and the entry of textile and apparel products under the North American Free Trade Agreement (NAFTA), respectively. These sections are moved to Part 102 to follow the rules of origin for textile and apparel products set forth in § 102.21 and new §§ 102.22 and 102.23 as part of the consolidation of the textile regulations. Section 12.131 is amended by re-designating this provision as § 102.24, by replacing the references to ''textiles and textile products'' with the words ''textile or apparel products,'' and by replacing the reference in paragraph (b) to ''12.130'' with the words ''§ 102.21 or § 102.22 of this chapter, as applicable.'' Section 12.131(b) (now § 102.24(b)) is further amended by adding the words ''or other company'' in the first sentence after ''factory, producer or manufacturer'' to address a situation in which a company that is declared as the actual manufacturer at the time of entry is not a factory, producer or manufacturer but is a trading company or other type of company.

Section 12.132 is amended by re-designating this provision as new § 102.25 and by replacing the references to ''textile and apparel goods'' with the words ''textile or apparel products.'' As the requirement for the submission of a textile declaration has been eliminated, the language preceding paragraph (a)(1) of § 12.132 is removed, as are paragraphs (a)(1) and (a)(2), which concern declarations by manufacturers or producers. Paragraph (a)(3) of § 12.132, pertaining to incomplete declarations and the ability of the port director to determine the country of origin of merchandise, is retained although it is amended by deleting the reference to the textile declaration. Paragraph (b) of § 12.132 is also retained as part of new § 102.25.

Finally, this document amends Part 163 of the CBP regulations by removing from the list of entry records in the Appendix (the interim ''(a)(1)(A) list'') the reference to former ''§ 12.130'' and the records listed thereunder and by replacing the reference to ''§ 12.132'' in the Appendix with ''§ 102.25.''

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments from the general public, including state, local, and tribal governments, that are timely submitted to CBP, including comments on the clarity of the interim regulations and how they may be made easier to understand. All such comments received from the public pursuant to this interim rule document will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), CBP regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Customs and Border Protection, 799 9th Street, NW. (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768. Comments may also be accessed at the Federal eRuling Portal. For additional information on accessing comments via the Federal eRulingmaking Portal, see the **ADDRESSES** section of this document.

Inapplicability of Notice and Delayed Effective Date Requirements

Under the Administrative Procedure Act (''APA'') (5 U.S.C. 553), agencies generally are required to publish a notice of proposed rulemaking in the **Federal Register** that solicits public comment on proposed regulatory amendments, consider public comments in deciding on the content of the final amendments, and publish the final amendments at least 30 days prior to their effective date. However, section 553(a)(1) of the APA provides that the standard notice and comment procedures do not apply to an agency rulemaking to the extent that it involves a foreign affairs function of the United States. The Department of the Treasury has directed that these regulations be promulgated as immediately effective interim regulations because they involve a foreign affairs function of the United States.

In order to implement import policies with respect to textiles and textile products, Congress provided authority to the President to negotiate textile restraint agreements in section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the authority to carry out such agreements by issuing regulations governing the entry of merchandise covered by the agreements into the United States. The amendments set forth in this document, which are promulgated in large part pursuant to 7 U.S.C. 1854, revise, update, and restructure the regulations relating to the country of origin of textile and apparel products. The primary function of these amendments is to facilitate the correct reporting (and deter the fraudulent reporting) of the origin of textile and apparel imports, thereby preventing the circumvention or frustration of the bilateral textile restraint agreements which remain in force or which may be negotiated in the future as well as prevent the contravention of actions taken by CITA pursuant to the textile safeguard provisions of China's WTO Accession Agreement. The interim regulations set forth in this document directly impact upon the administration and enforcement of the remaining quantitative limitations in bilateral trade agreements and the unilaterally imposed restrictions on textile imports by ensuring, to the greatest extent

possible, that the correct country of origin is attributed to all textile imports.

In addition, by improving the proper reporting of the country of origin of textile imports, these interim regulations will facilitate enforcement and administration of the various bilateral and multilateral free trade agreements with which the United States is a party by helping to ensure that only those textile products that are entitled to trade benefits receive those benefits.

For the above reasons, it has also been determined that prior notice and public procedure, and a delayed effective date, are impracticable, unnecessary and contrary to the public interest pursuant to 5 U.S.C. 553(b)(B) and 553(d)(3), respectively.

Executive Order 12866 and Regulatory Flexibility Act

CBP has determined that this document is not a regulation or rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 1993), because it pertains to a foreign affairs function of the United States, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866. Because a notice of proposed rulemaking is not required under section 553(b) of the APA for the reasons described above, CBP notes that the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 et seq.), do not apply to this rulemaking. Accordingly, CBP also notes that this interim rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information in these interim regulations (the identification of the manufacturer on CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary)) have been previously reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1651–0024 and 1651–0022, respectively. This interim rule clarifies that the manufacturer to be identified on entries of textile and apparel products must consist of the entity performing the origin-conferring operations.

Drafting Information

The principal authors of this document were Cynthia Reese and Craig Walker, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices participated in its development.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his delegate) to approve regulations related to certain CBP revenue functions.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

19 CFR Part 141

Bonds, Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 144

Bonds, Customs duties and inspection, Reporting and recordkeeping requirements, Warehouses.

19 CFR Part 146

Bonds, Customs duties and inspection, Entry, Foreign trade zones, Imports, Reporting and recordkeeping requirements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ Accordingly, chapter I of title 19, Code of Federal Regulations (19 CFR chapter I), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS), 1624;

* * * * *

■ 2. The specific authority citation for §§ 12.130 and 12.131 is removed.

§§ 12.130, 12.131, 12.132 [Removed]

■ 3. The undesignated center heading ''TEXTILES AND TEXTILE PRODUCTS'' and §§ 12.130, 12.131, and 12.132 are removed.

PART 102—RULES OF ORIGIN

■ 1. The general authority citation for Part 102 is revised to read as follows:

Authority: 7 U.S.C. 1854, 19 U.S.C. 66, 1202 (General Note 3(i) Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

■ 2. Section 102.0 is revised to read as follows:

§ 102.0 Scope.

With the exception of §§ 102.21 through 102.25, this part sets forth rules for determining the country of origin of imported goods for the purposes specified in paragraph 1 of Annex 311 of the North American Free Trade Agreement (''NAFTA''). These specific purposes are: country of origin marking; determining the rate of duty and staging category applicable to originating textile and apparel products as set out in Section 2 (Tariff Elimination) of Annex 300–B (Textile and Apparel Goods); and determining the rate of duty and staging category applicable to an originating good as set out in Annex 302.2 (Tariff Elimination). The rules for determining the country of origin of textile and apparel products set forth in § 102.21 apply for the foregoing purposes and for the other purposes stated in that section. Section 102.22 sets forth rules for determining whether textile and apparel products are considered products of Israel for purposes of the customs laws and the administration of quantitative limitations. Sections 102.23 through 102.25 set forth certain procedural requirements relating to the importation of textile and apparel products.

■ 3. New §§ 102.22 through 102.25 are added to read as follows:

§ 102.22 Rules of origin for textile and apparel products of Israel.

(a) *Applicability.* The provisions of this section will control for purposes of determining whether a textile or apparel product, as defined in § 102.21(b)(5), is considered a product of Israel for purposes of the customs laws and the administration of quantitative limitations. A textile or apparel product will be a product of Israel if it is wholly the growth, product, or manufacture of Israel. However, a textile or apparel product that consists of materials produced or derived from, or processed in, another country, or insular possession of the United States, in

addition to Israel, will be a product of Israel if it last underwent a substantial transformation in Israel. A textile or apparel product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

(b) *Criteria for determining country of origin for products of Israel.* The criteria in paragraphs (b)(1) and (b)(2) of this section will be considered in determining whether an imported textile or apparel product is a product of Israel. These criteria are not exhaustive. One or any combination of criteria may be determinative, and additional factors may be considered.

(1) A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:

(i) Commercial designation or identity;

(ii) Fundamental character; or

(iii) Commercial use.

(2) In determining whether merchandise has been subjected to substantial manufacturing or processing operations, the following will be considered:

(i) The physical change in the material or article as a result of the manufacturing or processing operations in Israel or in Israel and a foreign territory or country or insular possession of the U.S.;

(ii) The time involved in the manufacturing or processing operations in Israel or in Israel and a foreign territory or country or insular possession of the U.S.;

(iii) The complexity of the manufacturing or processing operations in Israel or in Israel and a foreign territory or country or insular possession of the U.S.;

(iv) The level or degree of skill and/or technology required in the manufacturing or processing operations in Israel or in Israel and a foreign territory or country or insular possession of the U.S.; and

(v) The value added to the article or material in Israel or in Israel and a foreign territory or country or insular possession of the U.S., compared to its value when imported into the U.S.

(c) *Manufacturing or processing operations.* (1) An article or material usually will be a product of Israel when it has undergone in Israel prior to importation into the United States any of the following:

(i) Dyeing of fabric and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) Spinning fibers into yarn;

(iii) Weaving, knitting or otherwise forming fabric;

(iv) Cutting of fabric into parts and the assembly of those parts into the completed article; or

(v) Substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign territory or country, or insular possession of the U.S., into a completed garment (e.g., the complete assembly and tailoring of all cut pieces of suit-type jackets, suits, and shirts).

(2) An article or material usually will not be considered to be a product of Israel by virtue of merely having undergone any of the following:

(i) Simple combining operations, labeling, pressing, cleaning or dry cleaning, or packaging operations, or any combination thereof;

(ii) Cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;

(iii) Trimming and/or joining together by sewing, looping, linking, or other means of attaching otherwise completed knit-to-shape component parts produced in a single country, even when accompanied by other processes (e.g., washing, drying, and mending) normally incident to the assembly process;

(iv) One or more finishing operations on yarns, fabrics, or other textile articles, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking, mercerizing, or similar operations; or

(v) Dyeing and/or printing of fabrics or yarns.

(d) *Results of origin determination.* If Israel is determined to be the country of origin of a textile or apparel product by application of the provisions in paragraphs (a), (b), and (c) of this section, the inquiry into the origin of the product ends. However, if Israel is determined not to be the country of origin of a textile or apparel product by application of the provisions in paragraphs (a), (b), and (c) of this section, the country of origin of the product will be determined under the rules of origin set forth in § 102.21, although the application of those rules cannot result in Israel being the country of origin of the product.

§ 102.23 Origin and Manufacturer Identification

(a) *Textile or Apparel Product Manufacturer Identification.* All entries of textile or apparel products listed in § 102.21(b)(5) must identify on CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary), and in all electronic data transmissions that require identification of the manufacturer, the manufacturer of such products through a manufacturer identification code (MID) constructed from the name and address of the entity performing the origin-conferring operations pursuant to § 102.21 or § 102.22, as applicable. This code must be accurately constructed using the methodology set forth in the Appendix to this part, including the use of the two-letter International Organization for Standardization (ISO) code for the country of origin of such products. When a single entry is filed for products of more than one manufacturer, the products of each manufacturer must be separately identified. Importers must be able to demonstrate to CBP their use of reasonable care in determining the manufacturer. If an entry filed for such merchandise fails to include the MID properly constructed from the name and address of the manufacturer, the port director may reject the entry or take other appropriate action.

(b) *Incomplete or insufficient information.* If the port director is unable to determine the country of origin of a textile or apparel product, the importer must submit additional information as requested by the port director. Release of the product from CBP custody will be denied until a determination of the country of origin is made based upon the information provided or the best information available.

(c) *Date of exportation.* For quota, visa or export license requirements, and statistical purposes, the date of exportation for textile or apparel products listed in § 102.21(b)(5) will be the date the vessel or carrier leaves the last port in the country of origin, as determined by application of § 102.21 or § 102.22, as applicable. Contingency of diversion in another foreign territory or country will not change the date of exportation for quota, visa or export license requirements or for statistical purposes.

§ 102.24 Entry of textile or apparel products.

(a) *General.* Separate shipments of textile or apparel products, including samples, which originate from a country subject to visa or export license requirements for exports of textile or

apparel products, arriving in the customs territory of the United States for one consignee on the same conveyance on the same day, the combined value of which is over $250, will not be entered under the informal entry procedures set forth in subpart C, Part 143 or procedures set forth in § 141.52 of this chapter. Port directors will refuse separate informal entries and require a formal entry and visa or export license, as appropriate, for all such merchandise. A consignee for purposes of this section is the ultimate consignee and does not include a freight forwarder or Customs broker not importing for its own account.

(b) *Denial of entry pursuant to directive.* Textile or apparel products subject to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), whether or not the requirements set forth in § 102.21 or § 102.22, as applicable, have been met, will be denied entry where the factory, producer, manufacturer, or other company named in the entry documents for such textile or apparel products is named in a directive published in the **Federal Register** by the Committee for the Implementation of Textile Agreements as a company found to be illegally transshipping, closed or unable to produce records to verify production. In these circumstances, no additional information will be accepted or considered by CBP for purposes of determining the admissibility of such textile or apparel products.

§ 102.25 Textile or apparel products under the North American Free Trade Agreement.

In connection with a claim for NAFTA preferential tariff treatment involving non-originating textile or apparel products subject to the tariff preference level provisions of appendix 6.B to Annex 300–B of the NAFTA and Additional U.S. Notes 3 through 6 to Section XI, Harmonized Tariff Schedule of the United States, the importer must submit to CBP a Certificate of Eligibility covering the products. The Certificate of Eligibility must be properly completed and signed by an authorized official of the Canadian or Mexican government and must be presented to CBP at the time the claim for preferential tariff treatment is filed under § 181.21 of this chapter. If the port director is unable to determine the country of origin of the products, they will not be entitled to preferential tariff treatment or any other benefit under the NAFTA for which they would otherwise be eligible.

■ 4. Part 102 is amended by adding an appendix to read as follows:

Appendix To Part 102—Textile and Apparel Manufacturer Identification

Rules for Constructing the Manufacturer Identification Code (MID)

1. Pursuant to § 102.23(a) of this part, all entries of textile or apparel products listed in § 102.21(b)(5) must identify on CBP Form 3461 (Entry/Immediate Delivery) and CBP Form 7501 (Entry Summary), and in all electronic data transmissions that require identification of the manufacturer, the manufacturer of such products through a manufacturer identification code (MID) constructed from the name and address of the entity performing the origin-conferring operations. The MID may be up to 15 characters in length, with no spaces inserted between the characters.

2. The first 2 characters of the MID consist of the ISO code for the actual country of origin of the goods. The one exception to this rule is Canada. ''CA'' is not a valid country code for the MID; instead, one of the appropriate province codes listed below must be used:

ALBERTA—XA
BRITISH COLUMBIA—XC
MANITOBA—XM
NEW BRUNSWICK—XB
NEWFOUNDLAND (LABRADOR)—XW
NORTHWEST TERRITORIES—XT
NOVA SCOTIA—XN
NUNAVUT—XV
ONTARIO—XO
PRINCE EDWARD ISLAND—XP
QUEBEC—XQ
SASKATCHEWAN—XS
YUKON TERRITORY—XY

3. The next group of characters in the MID consists of the first three characters in each of the first two ''words'' of the manufacturer's name. If there is only one ''word'' in the name, then only the first three characters from the name are to be used. For example, ''Amalgamated Plastics Corp.'' would yield ''AMAPLA,'' and ''Bergstrom'' would yield ''BER.'' If there are two or more initials together, they are to be treated as a single word. For example, ''A.B.C. Company'' or ''A B C Company'' would yield ''ABCCOM,'' ''O.A.S.I.S. Corp.'' would yield ''OASCOR,'' ''Dr. S.A. Smith'' would yield ''DRSA,'' and ''Shavings B L Inc.'' would yield ''SHABL.'' The English words ''a,'' ''an,'' ''and,'' ''of,'' and ''the'' in the manufacturer's name are to be ignored. For example, ''The Embassy of Spain'' would yield ''EMBSPA.'' Portions of a name separated by a hyphen are to be treated as a single word. For example, ''Rawles-Aden Corp.'' or ''Rawles—Aden Corp.'' would both yield ''RAWCOR.'' Some names include numbers. For example, ''20th Century Fox'' would yield ''20TCEN'' and ''Concept 2000'' would yield ''CON200.''

a. Some words in the title of the foreign manufacturer's name are not to be used for the purpose of constructing the MID. For example, most textile factories in Macau start with the same words, ''Fabrica de Artigos de Vestuario,'' which means ''Factory of Clothing.'' For a factory named ''Fabrica de Artigos de Vestuario JUMP HIGH Ltd,'' the portion of the factory name that identifies it as a unique entity is ''JUMP HIGH.'' This is the portion of the name that should be used to construct the MID. Otherwise, all of the MIDs from Macau would be the same, using ''FABDE,'' which is incorrect.

b. Similarly, many factories in Indonesia begin with the prefix PT, such as ''PT Morich Indo Fashion.'' In Russia, other prefixes are used, such as ''JSC,'' ''OAO,'' ''OOO,'' and ''ZAO.'' These prefixes are to be ignored for the purpose of constructing the MID.

4. The next group of characters in the MID consists of the first four numbers in the largest number on the street address line. For example, ''11455 Main Street, Suite 9999'' would yield ''1145.'' A suite number or a post office box is to be used if it contains the largest number. For example, ''232 Main Street, Suite 1234'' would yield ''1234.'' If the numbers in the street address are spelled out, such as ''One Thousand Century Plaza,'' no numbers representing the manufacturer's address will appear in this section of the MID. However, if the address is ''One Thousand Century Plaza, Suite 345,'' this would yield ''345.'' When commas or hyphens separate numbers, all punctuation is to be ignored and the number that remains is to be used. For example, ''12,34,56 Alaska Road'' and ''12–34–56 Alaska Road'' would yield ''1234.'' When numbers are separated by a space, both numbers are recognized and the larger of the two numbers is to be selected. For example, ''Apt. 509 2727 Cleveland St.'' would yield ''2727.''

5. The last characters in the MID consist of the first three letters in the city name. For example, ''Tokyo'' would yield ''TOK,'' ''St. Michel'' would yield ''STM,'' ''18-Mile High'' would yield ''MIL,'' and ''The Hague'' would yield ''HAG.'' Numbers in the city name or line are to be ignored. For city-states, the first three letters are to be taken from the country name. For example, Hong Kong would yield ''HON,'' Singapore would yield ''SIN,'' and Macau would yield ''MAC.''

6. As a general rule, in constructing a MID, all punctuation, such as commas, periods, apostrophes, and ampersands, are to be ignored. All single character initials, such as the ''S'' in ''Thomas S. Delvaux Company,'' are also to be ignored, as are leading spaces in front of any name or address.

7. Examples of manufacturer names and addresses and their corresponding MIDs are listed below:

LA VIE DE FRANCE, 243 Rue de la Payees, 62591 Bremond, France; FRLAVIE243BRE
20TH CENTURY TECHNOLOGIES, 5 Ricardo Munoz, Suite 5880, Caracas, Venezuela; VE20TCEN5880CAR
Fabrica de Artigos de Vestuario TOP JOB, Grand River Building, FI 2–4, Macau; MOTOPJOB24MAC
THE GREENHOUSE, 45 Royal Crescent, Birmingham, Alabama 35204; USGRE45BIR
CARDUCCIO AND JONES, 88 Canberra Avenue, Sidney, Australia; AUCARJON88SID
N. MINAMI & CO., LTD., 2–6, 8–Chome Isogami-Dori, Fukiai-Ku, Kobe, Japan; JPMINCO26KOB
BOCCHACCIO S.P.A., Visa Mendotti, 61, 8320 Verona, Italy; ITBOCSPA61VER
MURLA-PRAXITELES INC., Athens, Greece; GRMURINCATH
SIGMA COY E.X.T., 4000 Smyrna, Italy, 1640 Delgado; ITSIGCOY1640SMY

COMPANHIA TEXTIL KARSTEN, Calle Grande, 25–27, 67890 Lisbon, Portugal, PTKAR2527LIS
HURON LANDMARK, 1840 Huron Road, Windsor, ON, Canada N9C 2L5; XOHURLAN1840WIN

PART 141—ENTRY OF MERCHANDISE

■ 5. The general authority citation for Part 141 and specific authority citation for § 114.113 continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1624.

* * * * *

Section 141.113 also issued under 19 U.S.C. 1499, 1623.

§ 141.113 [Amended]

■ 6. In § 141.113, paragraph (b) is amended by removing the words ''12.130 of this chapter'' and by adding, in their place, the words ''§ 102.21 or § 102.22 of this chapter, as applicable,''.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

■ 7. The general authority citation for Part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

§ 144.38 [Amended]

■ 8. In § 144.38, paragraph (f)(1) is amended by removing the words ''§ 12.130 of this chapter'' and by adding, in their place, the words ''§ 102.21 or § 102.22 of this chapter, as applicable''.

PART 146—FOREIGN TRADE ZONES

■ 9. The authority citation for Part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 146.63 [Amended]

■ 10. In § 146.63, paragraph (d)(1) is amended by removing the words § 12.130 of this chapter'' and by adding, in their place, the words ''§ 102.21 or § 102.22 of this chapter, as applicable''.

PART 163—RECORDKEEPING

■ 11. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1510, 1624.

■ 12. The Appendix to Part 163 is amended by removing under section IV the listing of ''§ 12.130 Textiles and textile products Single country declaration Multiple country declaration VISA'' and the listing of ''§ 12.132 NAFTA textile requirements'', and by adding a new listing under section IV in numerical order to read as follows:

Appendix to Part 163—Interim (a)(1)(A) List.

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IV. * * *

§ 102.25 NAFTA textile requirements

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Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: September 30, 2005.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–19985 Filed 9–30–05; 2:38 pm]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 179

Munitions Response Site Prioritization Protocol

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense (hereinafter the Department) is promulgating the Munitions Response Site (MRS) Prioritization Protocol (MRSPP) (hereinafter referred to as the rule) as a rule. This rule implements the requirement established in section 311(b) of the National Defense Authorization Act for Fiscal Year 2002 for the Department to assign a relative priority for munitions responses to each location (hereinafter MRS) in the Department's inventory of defense sites known or suspected of containing unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC).

DATES: This rule is effective October 5, 2005.

FOR FURTHER INFORMATION CONTACT: If there are specific questions or to request an opportunity to review the docket for this rulemaking, please contact Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Installations & Environment) [ODUSD (I&E)], 703–571–9060. This final rule along with relevant background information is available on the World Wide Web at the Defense Environmental Network & Information eXchange Web site, *https://www.denix.osd.mil/MMRP*.

SUPPLEMENTARY INFORMATION:

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I. Authority

This rule is being finalized under the authority of section 311(b) of the National Defense Authorization Act for Fiscal Year 2002, codified at section 2710(b) of title 10 of the U.S. Code [10 U.S.C. 2710(b)].

II. Background

The Department of Defense (hereinafter the Department) developed the rule in consultation with states and tribes, as required by statute. The Department published the proposed rule in the **Federal Register** as a proposed rule on August 22, 2003, at 68 FR 50900. A technical correction to the proposed rule was published on September 10, 2003, at 68 FR 53430.

The public comment period for the proposed rule ended November 19, 2003. Sixteen commenters submitted comments on the proposed rule. The preamble to this final rule consists mainly of an explanation of the Department's responses to these comments. Therefore, both this preamble and the preamble to the proposed rule should be reviewed should a question arise as to the meaning or intent of the final rule. Unless directly contradicted or superseded by this preamble to the rule or by the rule, the preamble to the proposed rule reflects the Department's intent for the rule.

The preamble to the final rule provides a discussion of each proposed rule section on which comments were received. Revisions to the proposed rule that are simply editorial or that do not

reflect substantive changes are not addressed in this preamble.

In addition to the comments on the proposed rule, the Department received a number of comments that addressed topics outside the scope of the proposed rule. These topics included: The universe of sites that comprise the inventory, which is established by statute; funding for munitions responses; comments on data quality; a proposal for training to educate Department personnel, regulators, and/or stakeholders; and implementing guidance that the Department may develop for the rule. These comments are not addressed in this rule. All comments the Department received are presented in a ''Response to Comments'' document, which has been placed in the docket for this rulemaking.

III. Summary of Significant Changes to the Final Rule

The Department made a number of changes to the proposed rule that are reflected in this final rule. Many of these revisions pertain to clarification of terms and definitions based on comments received, or changes to reflect new statutory definitions promulgated in the National Defense Authorization Act for 2004 and codified at 10 U.S.C. 101.

The most significant change to the proposed rule pertains to the module that evaluates the potential health hazards associated with MC. The Department modified this module in response to several comments. This module now has seven potential outcomes (*i.e.*, A through G) rather than the three potential outcomes described in the proposed rule (*i.e.*, high, medium, and low). A detailed explanation of this modification is provided in a following section of this preamble.

The Department has also revised the proposed rule to clarify that current land owners may participate in application of the rule at Formerly Used Defense Sites (FUDS). Another change was to clarify that the quality assurance panel that reviews each priority will consist of only Department personnel.

IV. Response to Comments

This section contains the Department's responses to the comments received on the proposed rule, organized by the structure of the proposed and final rules.

A. Section 179.2. Applicability and Scope

Several commenters stated that the proposed rule should be published as Departmental guidance and not as a federal regulation. The Department, however, interpreted the language in the National Defense Authorization Act for 2002 as a term of art invoking the requirement for public comment provided in the Administrative Procedures Act. The Department is proceeding with publishing the final rule as a federal regulation.

One commenter stated that sites containing chemical warfare materiel (CWM) should be included as potential MRSs. The Department observes that the proposed rule makes clear that, if CWM is present at a defense site [as defined in 10 U.S.C. 2710(e)] in the form of UXO, DMM, or MC, that site would be an MRS and would be included in the inventory, and that all MRSs in the inventory are addressed under the rule. The Department made no change to the rule to address this comment.

Another comment stated that the Department had not clearly explained the scope of the exclusion for ''combat operations'' under 10 U.S.C. 2710(d)(2). This exclusion exempts from the requirement for inclusion in the inventory and application of the rule all locations where ''the presence of military munitions'' resulted ''from combat operations.'' The Department has not modified the rule.

A commenter requested that the Department change the Department's Control classification in the Status of Property data elements (proposed rule, Appendix A, Tables 5 and 15) to include land or water bodies owned, leased, or otherwise possessed by state military departments. The Department declined to make this change, as the Department does not have jurisdiction over properties owned, leased, or otherwise possessed by state military departments. Such locations are under state jurisdiction and would not be included in the 10 U.S.C. 2710(a) inventory.

B. Section 179.3. Definitions

This section of the preamble addresses comments on the definitions in section 179.3 of the proposed rule.

The Department has modified definitions from the proposed rule or included certain new definitions to make this regulation consistent with terms and definitions promulgated by the National Defense Authorization Act for Fiscal Year 2004. These terms and definitions are codified at 10 U.S.C. 101. Affected terms are military munitions, operational range, range activities, and UXO.

The Department has also added the term ''munitions and explosives of concern (MEC)'' to the final rule for consistency with new Department policy. MEC, which is intended to distinguish specific categories of military munitions that may pose unique explosives safety risks, means UXO, as defined in 10 U.S.C. 101(e)(5); discarded military munitions, as defined in 10 U.S.C. 2710(e)(2); or munitions constituents (*e.g.*, TNT, RDX), as defined in 10 U.S.C. 2710(e)(3), present in high enough concentrations to pose an explosive hazard. As used in the rule, this term does not create any new category of materials covered under the proposed rule, nor does it exclude any category of materials covered under the proposed rule, and is adopted herein simply for consistency with terminology used elsewhere within the Department.

In response to a comment, the term ''chemical warfare agents'' has been changed to ''chemical agents.'' The definition of ''chemical warfare agents'' has also been changed to read: ''Chemical agent means a chemical compound (to include experimental compounds) that, through its chemical properties produces lethal or other damaging effects on human beings, is intended for use in military operations to kill, seriously injure, or incapacitate persons through its physiological effects. Excluded are research, development, testing and evaluation (RDTE) solutions; riot control agents; chemical defoliants and herbicides; smoke and other obscuration materials; flame and incendiary materials; and industrial chemicals. This definition is adopted based on 50 U.S.C. 1521(j)(1) in which the term ''chemical agents and munitions'' means ''* * * an agent or munition that, through its chemical properties, produces lethal or other damaging effects on human beings, except that such term does not include riot control agents, chemical herbicides, smoke, and other obscuration materials.'' This change makes the terminology used in the final rule consistent with the existing statutory definition of ''chemical agent and munition'' in 50 U.S.C. 1521(j)(1). The Department observes that chemical agents under 50 U.S.C. 1521(j)(1) include the V- and G-series nerve agents; H-series (*i.e.*, ''mustard'' agents) and L-series (*i.e.*, lewisite) blister agents; and certain industrial chemicals, including hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG), when contained in a military munition; and does not include riot control agents (*e.g.*, w-chloroacetophenone [CN] and o-chlorobenzylidenemalononitrile [CS] tear gas); chemical defoliants and herbicides; smoke and other obscuration materials; flame and incendiary materials; and industrial chemicals that

are not configured as a military munition.

The definition of ''chemical warfare materiel (CWM)'' has changed to reflect the adoption of the term ''chemical agent'' discussed previously in this rule.

One commenter stated that although the definition of ''military range'' includes buffer zones with restricted access and exclusionary areas, exclusionary zones at some former target bombing areas are not well defined. While the Department realizes this may be the case at some former military ranges, it believes site conditions and personnel experience will help ensure such areas are included and provide for reasonable application of the rule.

A commenter requested a change to the definition of ''MRS,'' maintaining that portions of a munitions response area (MRA) may not be part of an MRS and, therefore, would not be evaluated using this rule. The Department would like to clarify that, depending on site-specific factors, an MRA may be designated a single MRS or may be subdivided for the purposes of evaluation into multiple MRSs. In each and every case, however, once all the MRSs comprising an MRA have been evaluated (whether the MRA consists of a single MRS or multiple MRSs), the total acreage encompassed by the MRA will have been evaluated using this rule. Through this disciplined and documented approach, the protocol will ensure that an MRA's entire acreage will be addressed.

For example, in investigating a 1,000-acre MRA, the Department may identify five discrete locations (*e.g.*, MRS 1 through 5) that constitute 1,000 acres that require evaluation. Formal decision documents will be prepared for all five MRSs that document the Department's evaluations for the entire 1000 acres. This will ensure that the entire MRA acreage will be evaluated using the protocol.

One commenter requested adding to the end of the definition of ''MRA'': '' * * * therefore, all property within a munitions response area is known to require a munitions response.'' The Department observes that the definition of ''MRA'' already states, ''An MRA is comprised of one or more munitions response sites'' and the definition of an ''MRS'' is ''* * * a discrete location within an MRA that is known to require a munitions response.'' Because an MRA must comprise at least one MRS, the Department does not believe the definition requires modification as suggested by the commenter.

In response to another comment as to whether or not the acreage of an MRA includes water bodies, the Department observes that the acreage of an MRA may extend beyond the terrestrial boundary and include water bodies, such as lakes, ponds, streams, and coastal areas.

One commenter requested adding CWM, in addition to UXO, DMM, and MC, to the definitions of several terms, including MRA and MRS, and at several locations in the tables (Appendix A) of the proposed rule. The Department points out that the definition of ''military munitions'' already includes CWM; therefore, all other terms that build on the military munitions definition, specifically UXO and DMM, already include CWM.

C. Section 179.4. Policy

One commenter noted many positive attributes to the proposed rule. These included affirmative statements concerning the Department's active solicitation of participation by and inclusion of the states, the tribes, and stakeholders; identifying the need for a quality assurance panel to promote consistency in the application of the rule; straightforward recognition that the same level of information will not be available for all sites, and that for some sites, more information will be required in order to realistically apply the rule; and weighting factors, for the most part, are well explained and easy to understand. These comments did not require changing the proposed rule.

One commenter stated that the team approach to prioritization was too broad and implies that several people from multiple agencies, community groups, or tribes will need to be involved in the application of the rule to a specific MRS. The Department continues to believe that it is important to receive input and feedback from such sources in assigning a relative priority for response activities to each MRS and has not amended the proposed rule to address this comment.

The Department received a comment recommending that a state regulatory agency be designated to play a major role in the munitions response process, and if a state agency is unable to perform in this capacity, the U.S. Environmental Protection Agency (U.S. EPA) should do so. In such situations, involvement of U.S. EPA personnel is a matter for U.S. EPA to decide and not the Department; however, the Department notes that it will use a team approach for prioritization and encourages these agencies to participate.

The Department received a comment soliciting clarification on whether stakeholders will have input on the ''no longer required'' determination. An MRS will have the ''no longer required'' determination assigned only after the Response Complete (RC) or Remedy-in-Place (RIP) milestone is achieved. Stakeholders are afforded opportunities to participate and provide input throughout the munitions response process, to include prior to and following these milestones; however, stakeholders do not have a role in determining when an MRS has met the requirements for achieving these milestones.

D. Section 179.5. Responsibilities

A comment was received regarding the term ''administrative control'' and whether this term referred to specific Component's ownership responsibilities. The Department would like to clarify that the phrase ''under their administrative control'' reflects the delegation of responsibilities for munitions responses within the Department. This responsibility does not require the Department to have a current real property interest at a particular MRS.

The Department received several comments pertaining to prioritization at FUDS sites. One commenter asked for clarification of the phrase ''under the administrative control of,'' specifically pertaining to how the rule will apply at a FUDS. Under 10 U.S.C. 2701, the Department is required to ''carry out a program of environmental restoration * * * at each facility or site which was under the jurisdiction of the Secretary * * * at the time of actions leading to contamination.'' Therefore, under this requirement, the Department will apply the rule to an MRS at a FUDS if that MRS is included in the 10 U.S.C. 2710(a) inventory. FUDS, however, are not considered under the Department's control for the purposes of the Status of Property data elements in Appendix A, Tables 5 and 15.

Another commenter noted that for FUDS, the property owner should be involved with applying the rule to any MRS at the FUDS. The Department agrees and has modified section 179.5 to state: ''Ensure that EPA, other federal agencies (as appropriate or required), state regulatory agencies, tribal governments, local restoration advisory boards or technical review committees, local community stakeholders, and the current property owner (if the MRS is outside Departmental control) are offered opportunities to participate throughout the process of application of the rule and in making sequencing recommendations.''

Several commenters stated concerns pertaining to MRSs that have already been evaluated using the Risk

Assessment Code (RAC). The Department wishes to clarify that all MRSs in the 10 U.S.C. 2710(a) inventory will be evaluated using the rule and the most current information available, irrespective of whether that MRS has been evaluated under the RAC framework.

One commenter inquired whether a low prioritization score means ''no further action.'' The Department would like to clarify this is not the case. Prioritization scores are the first tool when defining the need for a munitions response.

One commenter asked the Department to add a definition of ''evaluation pending'' to the rule and publish procedures and time frames that apply to evaluation pending sites. The Department's response is that evaluation pending status is given to an MRS only when there is insufficient information to complete the evaluation using the rule. As soon as sufficient data are available, the MRS will be evaluated. Although the Department is not specifying time frames for addressing the MRS in evaluation pending status as part of this regulation, the Department will be developing specific goals to drive program progress.

A commenter asked for clarification as to when the rule will be applied at sites where the environmental restoration process is considered complete. The Department responds that, as stated in the proposed rule, an MRS no longer requires a priority when the Department has achieved the RC or RIP milestones. This means that a Component or another entity has conducted a munitions response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and/or five-year reviews, is required.

There were many comments pertaining to the quality assurance panel that will review prioritization decisions, especially inquiries about the panel's composition and authority. The Department wishes to clarify that the panel will comprise Component representatives trained in application of the rule who were not involved in the initial scoring of a specific MRS being reviewed. Stakeholders participate in application of the rule at an MRS, but will not be part of the quality assurance panel. The panel is an internal management and oversight function to ensure consistency of the rule's application. Components are, however, required to provide regulators and stakeholders the opportunity to comment on the quality assurance panel's rationale for any changes to the priority originally assigned.

One commenter proposed that the circumstances under which the rule shall be reapplied include when a quality assurance panel recommends a priority change. In response, the Department states that the panel will not direct a Component to reapply the rule; rather, the panel's decision, when adopted, will supersede the original priority assigned. If the panel recommends a change that results in a different priority, the Component will report, in the inventory data submitted to the ODUSD(I&E), the rationale for this change. The Component will also provide this rationale to the appropriate regulatory agencies and involved stakeholders for comment before finalizing the change.

Another commenter expressed support for the quality assurance panel in ensuring uniform application of the rule, but voiced concern this panel may not be effective if they must review all decisions before the prioritization can be finalized. According to the comment, initially it may be more productive to require that the panel review a percentage of the priority decisions to ensure they can review enough data to decide either to support or to change the priority assigned. The Department's response is that absent a review of each prioritization decision, it cannot be stated with authority that all decisions are in fact representative of site conditions and that the rule has been applied in a consistent manner. For this reason, at least initially, the Department is unwilling to consider a sampling-based approach to the work of the quality assurance panel.

One commenter stated that the rule's emphasis on Management Action Plans (MAPs) may place a strain on already limited state resources, especially in those states that do not already have a MAP. The Department responds that MAPs have been a requirement for all sites addressed under the Defense Environmental Restoration Program (DERP) for many years. If a specific site is not addressed in a MAP, that matter should be referred to the appropriate Component's Deputy Assistant Secretary with responsibility for environmental matters. Should such a referral not result in action, the matter should then be referred to the ODUSD(I&E).

Another commenter questioned how the MAPs for several MRSs would be integrated with the statewide MAP being developed in the FUDS program. The Department would like to clarify that the statewide MAP in the FUDS program collectively addresses all FUDS within a state, and that a MAP for each individual FUDS is also required.

Several commenters noted that conditions at an MRS are subject to change and such changes should be reflected in the priority. The Department agrees and has designed the rule to be reapplied if any specific factor considered in the application of the rule changes and if that change has the potential to affect the priority assigned.

There were several comments pertaining to sites where investigations were previously conducted. In response, the Department affirms that an appropriate munitions response is required for each MRS, and that an MRS reaches the ''no longer required'' evaluation only when the Department has conducted a munitions response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and/or five-year reviews, is required.

One commenter questioned the Department's reasons for rescoring sites based on a munitions response, arguing that the result will be to lower scores at the MRS without making progress toward completing all required munitions response activities. The commenter feels that partial munitions responses and continual rescoring is an inefficient approach to the program as a whole. The commenter suggests that once an MRS has received a score suitable to obtain funding, the score should not be lowered based on a munitions response that does not comprehensively and completely address the hazards present at the MRS. The Department disagrees, and notes that an annual reevaluation of the priority assigned to each MRS is statutorily mandated under 10 U.S.C. 2710(c)(1).

In response to a comment received on the certified letter the Department will send to states, territories, federal agencies, and tribal and local governments requesting their involvement in prioritization, the Department will send the letter to any known designee specified by the organization, or in the absence of such a designation, to the head of the organization.

E. Section 179.6. Procedures

This section addresses comments received on section 179.6 of the proposed rule and on the classification tables in Appendix A.

One commenter recommended that the Department revise the rule so that all data elements are consistent using a scale of zero to five; the Explosive Hazard Evaluation (EHE) module,

Chemical Warfare Materiel Hazard Evaluation (CHE) module, and Relative Risk Site Evaluation (RRSE) module be combined into one module; and the priority assigned to a site not be influenced by the type or source of the hazard that may be present at the site. The Department has not adopted such a change. Reducing the scale from seven to five, eliminating the modules, and not addressing the type and source of the hazard will not ensure that the priority given to an MRS adequately reflects the hazard posed by conditions at the MRS. The Department's objectives for the rule are: (1) ensuring that the priority sufficiently reflects actual conditions and potential hazards at the MRS, and (2) that the tool used be straightforward and easy to use. The current construct achieves those objectives.

One commenter requested clarification as to the correct procedure when multiple classifications apply at a given MRS. The commenter questioned whether the scores are cumulative within the module or if only the highest value is used. The Department wishes to clarify that the one highest value within each data element is used. For example, if at a specific MRS both (1) hand grenades containing an explosive filler, which would be categorized as sensitive under Appendix A, Table, and would score 30, and (2) DMM, containing a high-explosive filler, that have not been damaged by burning or detonation, which would be categorized as high explosive (unused) under Appendix A, Table 1, and would score 15 are present, the score (30 points) for the hand grenades containing an explosive filler would be selected.

Numerous comments received address both the EHE and CHE modules, particularly pertaining to the accessibility and receptor factors of these modules. Where this is the case, the comment and response appear under the EHE module responses for simplicity, but pertain to both sections.

1. Section 179.6(a). Explosive Hazard Evaluation Module

The Department received numerous comments on the Munitions Type data element (Appendix A, Table 1) and modified the rule to address many of the comments. For example, the Department modified two classifications within this data element to reflect the inherent difference between primary and secondary explosives. Explosives are classified as primary or secondary based on their susceptibility to initiation. Primary explosives, such as lead azide, are highly susceptible to initiation. Secondary explosives (*e.g.*, TNT, RDX, HMX), which constitute the bulk of the explosives likely to be present at an MRS, are formulated to be far less susceptible to initiation. To address these differences, the Department added to the sensitive classification: ''Bulk primary explosives, or mixtures of these with environmental media such that the mixture poses an explosive hazard.'' The Department also revised the Bulk high explosives, pyrotechnics or propellant classification to exclude primary explosives: ''Bulk secondary explosives, pyrotechnic compositions, or propellant (not contained in a munition), or mixtures of these with environmental media such that the mixture poses an explosive hazard.''

Also pertaining to the Munitions Type data element, another commenter noted that bulk high explosives mixed with environmental media can be reactive as well as explosive, and the hazard threshold of explosive is too high and should be lowered. The commenter suggested adding ''or reactive'' after ''that result in the mixture being explosive'' in the description of ''bulk high explosives'' and definitions for the terms ''reactive'' and ''explosive soil.'' The Department chose not to make these changes because the commenter did define ''reactive'' in this context, and the focus of the EHE module is explosive hazards.

The Department also added an additional classification to the Munitions Type data element to reflect the lesser risk posed by pyrotechnics that are unused or undamaged. The Pyrotechnic (used or damaged) classification is assigned a score of 20 points, while the Pyrotechnic (not used or damaged) classification is assigned a score of 10 points.

The Department modified the text of the Propellant classification to be consistent with the other classifications, adding ''* * * that have been damaged by burning or detonation'' and ''* * * that are deteriorated to the point of instability'' to the criteria for propellants that are DMM. The Department also corrected the Practice classification pertaining to the criteria for DMM to read: ''* * * that have not been damaged by burning or detonation'' and ''* * * that have not deteriorated to the point of instability.'' The Department also provided greater detail in the definition of a ''practice munition.''

One commenter stated that all practice munitions should be classified together and any MRS with practice munitions should receive a score of 15. The commenter's position is that many practice munitions with sensitive fuzes have miniscule amounts of explosives, while other practice munitions without sensitive fuzes have a much larger explosive or pyrotechnic spotting charge (*e.g.*, practice bombs). Because practice bombs, which receive a score of 5, account for some of the most common and dangerous UXO and cause many serious injuries, the commenter feels that practice munitions without sensitive fuzes that have explosive or pyrotechnic spotting charges are not classified correctly. The Department agrees with the commenter that practice munitions with explosive or pyrotechnic charges do pose an explosive hazard. When developing the rule, the Department defined practice munitions as those munitions that contain inert filler. Practice munitions with explosive or pyrotechnic charges are classified separately under the same data element and are given a value.

One commenter identified an inconsistency pertaining to the Munitions Type data element in that the definition of ''small arms ammunition'' category used the term ''evidence'' but did not specify whether this included ''historical evidence'' and ''physical evidence,'' as is the case for ''evidence of no munitions.'' The Department has revised the small arms ammunitions category within the Munitions Type data element to state: ''All used munitions or DMM that are categorized as small arms ammunition. [Physical evidence or historical evidence that no other types of munitions (*e.g.*, grenades, sub-caliber training rockets, demolition charges) were used or are present on the MRS is required for selection of this category.]''

Several commenters questioned the level of investigation required for assessing whether physical or historical evidence indicates that no UXO or DMM are present and suggested that specific investigation requirements should be developed for different sites. The Department has defined both historical evidence and physical evidence in the rule. The personnel applying the rule at an MRS will determine the appropriate level of evidence. The Department will not provide additional detail in the final rule, but may address this situation in implementing guidance or training materials.

One commenter requested clarification on the applicability of the proposed rule to open burning/open detonation (OB/OD) units. The commenter expressed concern that the rule indicates that OB/OD sites are excluded because they were used or permitted for disposal of military munitions. The Department would like to clarify that OB/OD units are subject

to prioritization under the rule only when the unit meets the requirements for inclusion in the 10 U.S.C. 2710(a) inventory.

One commenter suggested specifically including quality assurance test ranges within the EHE module Source of Hazard data element (Appendix A, Table 2) as they are not currently identified. To the extent that a quality assurance test range is a location that is known or suspected of containing UXO, DMM, or MC and is included in the inventory required under 10 U.S.C. 2710(a), the rule would be applied to that location. To the extent that such a quality assurance test range meets the criteria of Appendix A, Table 2 (*i.e.*, it meets the test for being a ''former range''), it is already included.

One commenter did not understand why a former munitions treatment area or unit would receive a lower score than a former military range given the unknown hazard posed by munitions that have been treated by OB/OD. The Department's response is that the higher value assigned to former military ranges reflects the fact that UXO are fuzed munitions that have been through their firing and arming cycle. In contrast, munitions treated in an OB/OD unit, while potentially damaged, are not normally fuzed and would most likely not complete their arming sequence. For this reason, UXO at a former military range is considered to pose a greater hazard than DMM at an OB/OD site.

In response to a comment, the Department modified the Former industrial operating facilities classification within the Source of Munitions data element to include former munitions maintenance facilities.

A commenter requested the definition of ''evidence of no munitions'' within the Munitions Type, Source of Hazard, and Location of Munitions (Appendix A, Tables 1, 2, and 3) data elements be changed to indicate that evidence shows that no UXO or DMM were ''ever''resent. The Department declines to make this change as the Department does not want to exclude sites from this classification where evidence indicates that munitions were at one time present but have since been removed, for example, as part of normal Department operation of a military range while the range was in use. This situation is different from UXO or DMM that are removed as part of a munitions response, as described in the next paragraph.

Another commenter asked about UXO that is on the surface and has since been removed, and UXO that is emergent from year to year, such as through frost heave. If munitions were found on the surface of an MRS, the MRS would be classified as Confirmed Surface. If investigation confirms that there are only subsurface munitions present, and natural phenomena (*e.g.*, frost heave or tidal action) occur on the MRS, the second-highest category—Confirmed subsurface, active—should be selected.

In response to a comment, the Department clarified the definition of ''on the surface'' to mean above the soil layer. UXO found in the tundra of Alaska, for example, is considered ''on the surface'' for the purposes of the rule, as the tundra is above the soil layer.

Several commenters stated that within the Information on the Location of Munitions and the Information on the Location of CWM data elements (Appendix A, Tables 3 and 13), no water depth is specified for the Subsurface, physical constraint category. The Department, however, would like to note that in these tables, a water depth of 120 feet was cited as a physical constraint.

Several commenters asked the relevance for selecting 120 feet as the depth for constituting a subsurface physical constraint. The Department selected this depth because of the limited time (less than 15 minutes) normally allowed to scuba divers at this depth, the considerable effort needed to dive to and below this depth, and the dangers associated with such deep dives to basic scuba divers.

Also pertaining to Appendix A, Tables 3 and 13, a commenter requested that the Department use caution when evaluating activities that are ''likely to occur'' because land use and recreational activities can change in ways that no one can predict. The commenter also noted that similar caution is needed when evaluating physical constraints because some constraints are barriers only if they are both kept in place and maintained. The Department agrees with the commenter that conditions may change over time. To address changes that may occur over time, the rule requires reevaluation and rescoring if site conditions change.

Pertaining to the Ease of Access data elements (Appendix A, Tables 4 and 14), one commenter stated that the proposed rule was unclear if deep-water areas without any monitoring would be scored as a complete or incomplete barrier. The Department's response is that if a barrier such as deep water is present, it is evaluated as to its effectiveness in preventing access to all parts of the MRS. In the specific case described in the comment, deep-water areas not subject to surveillance would be scored as Barrier to MRS access is complete, but not monitored.

One commenter stated that it is inequitable that the highest score under the Ease of Access data element (Appendix A, Tables 4 and 14) is a ''10,'' indicating all areas of the MRS are accessible, whereas the Information on Location of Munitions and Information on Location of CWM data elements (Appendix A, Tables 3 and 13) have a maximum score of 20, and a score of 10 represents only the suspected presence of UXO or DMM. The Department believes the current construct is appropriate because the Information on Location of Munitions and Information on Location of CWM data elements address access to the munition or CWM, while the Ease of Access data elements address access to the MRS.

Some commenters noted that some terms, such as ''barrier,'' need further clarification to ensure all users apply the term consistently. For example, people may assess differently whether a security patrol is a partial barrier to the MRS or not a barrier at all. Additionally, perceptions of a barrier may vary, as ''deep or fast-moving water'' may be a challenge instead of a barrier to some people. The Department recognizes these commenters' points but believes the definition is sufficient for the purposes of prioritization. Final determination as to what features, either natural or man-made, are barriers should be based on site-specific knowledge and the judgment of the personnel applying the rule to a specific MRS. Additionally, the Component's quality assurance panels will ensure consistency in the final rule's application.

One commenter stated that some data elements, specifically within the accessibility and receptor factors, within the various modules and among modules, are redundant and should be consolidated. The Department disagrees. Each data element provides important information on its own, bringing data from different perspectives together to best reflect actual site conditions.

Several commenters expressed concern that the receptor factors of the EHE and CHE modules do not capture transient populations. The Department points out that two of the three data elements that address human receptors attempt to address population, regardless of whether it is permanent or transient. The Population Density data elements (Appendix A, Tables 6 and 16) focus on permanent population as based on U.S. Census Bureau data within a city, town, or county. The Population Near Hazard data elements (Appendix A, Tables 7 and 17) are based on any

inhabited structures, whether they are permanent or temporary, that are routinely occupied for any portion of a day. The Type of Activities/Structures data elements (Appendix A, Tables 8 and 18) are also intended to address both permanent and transient populations. The Department is confident that, combined, these data elements sufficiently address both permanent and transient populations.

A commenter questioned the relevance of the Population Density data element in scoring the EHE module because, per the comment, (1) this number is dependent upon and controlled by the Ease of Access data element, and (2) by including the Population Density element, the EHE module score unjustifiably and unnecessarily prioritizes higher those MRSs that are in more densely populated areas, even when potential access to the MRS is precluded by barriers. The Department disagrees because the Population Density data element considers both the on-site and off-site populations surrounding an MRS. While access is a prerequisite for an on-site population, the effects of an event (*e.g.*, an explosion) at an MRS may affect populations that are not on site. This is one of the reasons that several of the elements in the receptor factor include a swath extending up to two miles from the perimeter of the MRS. The same commenter also believed the Types of Activities/Structures data elements (Appendix A, Tables 8 and 18) can be reasonably measured via the Population Near Hazard data elements (Appendix A, Tables 7 and 17), noting that including the Types of Activities/Structures data elements only complicates the process and favors MRSs in higher population areas. The Department again disagrees. The Department included the Types of Activities/Structures data elements to account for the types of activities occurring on a site, and the potential for those activities to bring a receptor into contact with UXO or DMM. It was not developed to give undue weight to high-population areas.

One commenter did not agree that the two-mile criterion applied to evaluating the Population Near Hazard data element is reasonable or necessary for any MRS not having the potential to create a chemical agent hazard that could affect inhabitants within two miles of the boundary. Instead, distance criteria that more reasonably consider the risks from the actual or suspected types of explosive hazards should be used. The Department disagrees because the two-mile radius considers not only the size of the population that may come onto the MRS, but also the effects that an explosion on the MRS may have to areas off the MRS (*e.g.*, blast overpressure, fragment throw). While this distance may be less than two miles, the two-mile distance was selected as a conservative measure.

One commenter stated that the Population Near Hazard data elements should bear greater weight than the Population Density data elements because the greatest hazard is to the population closest to the MRS. The Department, however, notes that these data elements evaluate different aspects of population. The Population Density data elements are used to assess the number of persons that could possibly access the MRS, while the Population Near Hazard data elements focus on the population (through number of structures) within a two-mile range that could be impacted by an unintentional explosion or CA release. The data elements are complementary.

Several commenters disagreed with the Department's use of inhabited structures to indicate population in the Population Near Hazard and Types of Activities/Structures data elements as, for example, ''people may engage in all sorts of activities despite the absence of structures in the vicinity, and many of these activities would put them at considerably greater risk from military munitions than populations that are, relatively speaking, protected within structures.'' The Department notes the concern, but believes the rule sufficiently accounts for these populations. The rule relies on several indicators to assess potentially exposed populations. The Types of Activities/Structures data elements address activities conducted on the MRS, and the number of permanent or temporary structures present. Parks and recreational areas, where hikers, campers, and tourists may be present, are specifically included in the Types of Activities/Structures elements.

In response to one commenter's statement that UXO may be encountered through nonintrusive activities such as boating and fishing, the Department believes that such activities are accounted for in the Types of Activities/Structures data elements.

Several commenters noted that Types of Activities/Structures data elements seem structured to give the greatest weight to activities and structures involving the most people, and that warehousing, industrial, agricultural, and forestry activities are weighted less. Some commenters are concerned because these areas experience high-density populations and activities that penetrate the ground surface during working hours. The Department recognizes the commenters' concerns but notes that, even though agricultural and forestry activities penetrate the ground surface, the exposed population is typically smaller than commercial, residential, or recreational areas. The Department is balancing activity intrusiveness with the potential population that could be exposed to a hazard. The rule does, however, require reevaluation if site conditions change.

One commenter questioned how the scoring values among modules and within modules were selected. The commenter specifically noted that the numerical weighting assigned within and among data elements seemed arbitrary and unnecessarily complicated. Further, there is no rationale for applying a score of 30 (worst case score) to certain data elements and a value of only 5 (worst case score) to other data elements within the same module. The commenter cites the Population Near Hazard data element as an example. Within this data element, there are six classifications established based on the number of inhabited structures within a two-mile distance of an MRS. In this data element, 1–5 inhabited structures receives a score of only 1, while 26 or more inhabited structures receives a score of 5. The commenter believes that the score should be the same, regardless of whether a single residence or 26 residences were on or near the MRS. The Department disagrees with the commenter that all situations should be scored the same because it impairs differentiation and thus prioritization, which is the purpose of this rule. The rule-making development effort involved a series of meetings over a year and a half, including substantial consultation with states, tribes, and other federal agencies. The Department also tested the developing model during this time to determine if the model outcomes were reasonable given what was known about the trial MRSs. The data elements and scores as presented in the proposed rule provided the most rational results and distribution among the sites.

Many commenters believe that the definition of ''ecological resources'' (Appendix A, Tables 9 and 19) in the rule is too limited. The Department does not mean to imply that less sensitive ecological resources are not important. For the purposes of assigning a relative priority to each MRS, however, the Department believes that limiting this definition to the most sensitive habitats is appropriate so that these areas are elevated in priority.

Similar to the comments for ecological resources, a commenter noted that the definition of ''cultural resources'' used in the EHE and CHE modules is too narrow and the list of statutes should not be limited. The Department believes this definition is appropriate for the purposes of assigning a relative priority to each MRS.

One commenter stated that there may be only a few MRSs that score high enough to be included in the highest tier of the EHE module, and therefore, more sites will be distributed among the lower tiers. Based on the testing described in the proposed rule, the Department expects the universe of sites to be adequately distributed among the possible scores. The highest hazard sites are not expected to be the most numerous, nor are the lowest hazard sites expected to be the most numerous. The Department believes this construct is appropriate.

2. Section 179.6(b). Chemical Warfare Materiel Hazard Evaluation Module

One commenter agreed with the Department that MRSs with known or suspected CWM are important and deserve special attention. The commenter did state, however, that the potential for public exposure should be an important consideration when ranking such MRSs. MRSs that have high potential for public exposures and risk should be ranked higher than an MRS with CWM that has minimal opportunity for public exposure. The Department addressed this concern during the development of the rule by including data elements to factor in population density and public exposure. Based on the data used in the rule, an MRS with known or suspected CWM does not always rank higher than a site without CWM.

A commenter suggested that receptors under the CHE module should be weighted higher than those under the EHE module because CWM pose hazards associated with both the explosive impact and the dispersion of the chemical agents. The Department believes that the rule appropriately accounts for the special characteristics of CWM in the CWM Configuration and Sources of CWM data elements (Appendix A, Tables 11 and 12).

One commenter asked if all CWM is considered similar in the severity of its effects and regardless of concentration. The Department's response is that the rule does not consider the differences in the mechanism of action (e.g., neurotransmitter disruption) or the toxicological properties (*e.g.*, Lethal Dose for 50 percent of the exposed population [LD50]). The CWM Configuration and Sources of CWM data elements do address the differences in the hazards posed by CWM (*e.g.*, CWM with an explosive burster scores higher than CWM without a burster).

One commenter felt that classifying CWM mixed with UXO lower than CWM under the CWM Configuration data element does not make sense. The commenter stated that this implies that placing some conventional UXO at an MRS with known or suspected CWM can reduce the hazard at that site. To remedy the conflict, the commenter suggested deleting the category CWM mixed with UXO from Appendix A, Table 11 and treating all MRSs containing CWM UXO or damaged CWM DMM as the highest scoring hazard, irrespective of the presence of conventional munitions that are UXO or DMM. The Department, however, believes that explosively configured CWM, which are designed to achieve optimal dispersion of their chemical agent fill, that are UXO or that are damaged DMM should be assigned a higher score than undamaged CWM/DMM or CWM not configured as a munition that are mixed with conventional munitions that are UXO. The Department left this classification unchanged because the detonation of a conventional munition that both is a UXO and mixed with undamaged CWM/DMM or CWM not configured as a munition is less likely to result in a dispersal of any chemical agent present. The Department believes that the classifications assigned appropriately differentiate between the potential chemical agent hazards presented.

One commenter questioned why production facilities; research, development, testing and evaluation facilities; training facilities; and storage or transfer points were identified as separate categories with different hazard scorings within the Sources of CWM data element (Appendix A, Table 12). According to the commenter, the only important issues are: (1) The type of CWM (*i.e.*, it must be either UXO or DMM); (2) its condition (damaged or undamaged); and (3) the strength of evidence (known or suspected CWM contamination). The commenter recommended deleting all other categories. The Department does not believe that there are only three important issues and that the other categories are extraneous. The Department has identified those separate categories under the CWM Configuration and Sources of CWM data elements to enable it to evaluate all known and relevant data and to assign appropriate priorities.

One commenter stated that the rule does not consider CWM that has been managed via OB/OD activities or via on-site disposal (*e.g.*, burial). The Department disagrees, and observes that while not specifically described as OB/OD or burial sites, these sites have in common that any CWM present is DMM. The CWM Configuration data element (Appendix A, Table 11) specifically includes CWM that are DMM, and addresses those differently depending on whether or not the CWM has been damaged (irrespective of how that damage occurred). The Sources of CWM data element (Appendix A, Table 12) specifically considers DMM that are on the surface or in the subsurface, irrespective of how the CWM came to be there.

One commenter stated that it is not clear whether CWM mixed with UXO includes or purposely excludes explosively configured CWM. The Department's response is that explosively configured CWM that is either UXO or damaged DMM receives a score of 30 in Table 11 of Appendix A. The CWM mixed with UXO is used for undamaged CWM that are DMM or that are not configured as a munition, and that are commingled with conventional munitions that are UXO. These score 25.

One commenter questioned whether the receptor factor in the CHE module should be the same as for the EHE, given the impact of wind drift on populations if a chemical agent is released. Evaluation of factors such as dispersion by wind current is far more complex than is appropriate for a prioritization tool. Such factors may, however, be important during a munitions response and be important considerations in the evaluation of remedial alternatives. The Department believes that the current receptor construct is sufficient for assigning each MRS a relative priority.

3. Section 179.6(c). Health Hazard Evaluation (HHE) Module

The Department received a number of comments on the Relative Risk Site Evaluation (RRSE) module, which is intended to evaluate the health hazards associated with MC and any incidental nonmunitions-related contaminants at an MRS. The Department has revised and renamed this module in response to the most significant comments received on the proposed rule. Several commenters noted that although the EHE and CHE module results seemed well balanced in terms of the distribution of outcomes, the RRSE module appeared to score too many sites as ''high,'' inappropriately skewing the overall priority assigned to the MRS.

Specifically, it was observed that having only three outcomes (*i.e.*, high, medium, and low) as provided in the RRSE module can result in this one module being the dominating factor in the overall priority assignment. In response to this significant comment, the Department analyzed the construct of the module and revised it so that the outcome in the rule has seven possible answers, increasing the ability to differentiate among MRSs. Accordingly, the Department believes that the revised module better reflects the relative evaluation of explosive, CWM, and MC hazards potentially present at the site. The Department has also changed the name of the module to the Health Hazard Evaluation (HHE) Module to differentiate it from the three-outcome RRSE used in the Department's Installation Restoration program (IRP). The Department will apply the HHE only to MRSs subject to this rule. The HHE module is intended to evaluate health hazards associated with MC at an MRS, with only incidental nonmunitions-related contaminants addressed under the MMRP.

The RRSE will continue to be applied to sites in the IRP category of the DERP.

Within the revised framework, the data and the process by which the data are evaluated are the same as within the RRSE; however, the distinction between the previous and revised frameworks lies in the greater number of outcomes (*i.e.*, seven versus three). Only MRSs with the maximum results for the three factors (*i.e.*, Contaminant Hazard Factor (CHF), Receptor Factor, and Migration Pathway Factor) are assigned the highest priority (*i.e.*, Category A). In other words, only those MRSs with significant MC-related health hazards, an identified receptor, and an evident migration pathway are assigned to Category A for the HHE module.

Tables 1, 2, and 3 below illustrate the derivation of the seven categories of the HHE. Table 1, which reproduces Table 21 of Appendix A, provides the three potential outcomes for each of the factors in the HHE. Table 2, which reproduces Table 22 of Appendix A, illustrates the different possible combinations of the results. The frequency in this table denotes the number of times each combination is used. Table 3, which reproduces Table 23 of Appendix A, spreads the possible combinations across seven categories, permitting only the most and least hazardous combinations in the highest and lowest categories. The other combinations are spread across the five remaining categories in a bell curve based on frequency of the combination.

TABLE 1.—HHE MODULE RATING

Contaminant hazard factor		Receptor factor		Migration pathway factor	
Significant	High (H)	Identified	High (H)	Evident	High (H)
Moderate	Middle (M)	Potential	Middle (M)	Potential	Middle (M)
Minimal	Low (L)	Limited	Low (L)	Confined	Low (L)

TABLE 2.—HHE MODULE RATING

Contaminant hazard factor	Receptor factor	Migration pathway		
		Evident	Potential	Confined
Significant	Identified	HHH	HHM	HHL
	Potential	HHM	HMM	HML
	Limited	HHL	HML	HLL
Moderate	Identified	HHM	HMM	HML
	Potential	HMM	MMM	MML
	Limited	HML	MML	MLL
Minimal	Identified	HHL	HML	HLL
	Potential	HML	MML	MLL
	Limited	HLL	MLL	LLL

TABLE 3.—HHE MODULE

Combination	Frequency	Category
HHH	1	A
HHM	3	B
HHL	3	C
HMM	3	
HML	6	D
MMM	1	
HLL	3	E
MML	3	
MLL	3	F
LLL	1	G

A commenter asked why the ecological receptors for surface water and sediment in the Receptor factor are limited to critical habitats ''and other similar environments.'' The Department's response is that it chose to focus on locations of critical habitat as a means of delineating among ecological receptors. Almost all areas are habitat for some species, and considering all habitats equally provides no differentiating criteria. In response to the same commenter, the Department wishes to clarify that consumption of fish in contaminated waters is accounted for in the HHE.

One commenter questioned the exclusion of an ecological endpoint during the evaluation of surface soils and requested that the Department consider groundwater as a minor receptor factor. The Department's response is that ecological receptors are not considered for evaluation of the surface soil since ecological standards are generally not available for the CHF calculation.

Some comments were received requesting that the Department change the comparison value used for carcinogens from a 1×10^{-4} to a 1×10^{-6} value, which would make it consistent with some states' cleanup goals. This rule, however, is not using the 1×10^{-4} value for cleanup; it is being used to assign a relative priority for action. The Department believes that 1×10^{-4} is an appropriate value for prioritization. Further, changing the range will not change the relative ranking of any individual site, as all sites would shift equally if a different endpoint were used.

One commenter stated that the Receptor Factor should not be limited to surface soil as receptors have the potential for exposure to subsurface soil during intrusive activities or after development where subsurface soils have been brought to the surface. The

Department responds that where subsurface soil is coming to the surface, or is exposed in a manner in which people can contact it (*e.g.,* in an excavation), it is treated as surface soil.

Another commenter stated the module appears to underestimate the risks posed by landfills. The Department points out the releases from landfills usually do not include UXO, DMM, or MC. It is more likely that a landfill would be addressed under the IRP category of the DERP and, as such, would not be evaluated under this rule.

One commenter stated there is little detail describing the terms ''identified,'' ''potential,'' and ''limited'' receptors. Until guidance specific to the HHE is developed, the Department suggests reviewing the Relative Risk Site Evaluation Primer (available at *http://www.dtic.mil/envirodod*) for detailed information on the use of this factor.

A commenter remarked that the Receptor Factor for groundwater should consider individuals exposed inadvertently, such as construction workers conducting invasive activities, in addition to water supply exposure. The HHE was primarily developed to consider long-term chronic exposures, not short-term exposures, through water consumption because such exposures are the dominant case associated with groundwater contamination. Further, as part of prioritization, it would be difficult to determine if workers are being exposed in this way. Finally, this rule is not intended as a risk assessment nor will it take the place of a risk assessment, where unusual exposure scenarios can be properly considered.

A few commenters were concerned as to whether or not CHF values are established for all constituents, and if not, how the Department would establish these values. The Department will initially adopt the current contaminant tables in the Relative Risk Site Evaluation Primer as a basis for the HHE. These values are updated every few years. The Department will also continue to work with U.S. EPA in its efforts to promulgate CHF values for MC and for other constituents.

Several comments pertained to state involvement and concerns about data quality and consistency. The Department intends on developing guidance and conducting training to ensure consistency in implementation of the rule. Additionally, states will be involved in applying the rule, including the HHE module.

4. Section 179.6(d). Determining the MRS Priority

The Department received several comments regarding how the module for MC is integrated into the overall priority matrix because the EHE and CHE modules have seven categories and the RRSE category has three. Some commenters believe that because there are too few RRSE categories, sites with high RRSE scores drive the priority unnecessarily too high. In response to this and other comments, the Department revised the RRSE module (now the HHE module) to provide a number of categories consistent with the other modules in the rule.

One commenter remarked on the pros and cons of driving module scores into tiers versus discrete scores and on the Department's intentions. The Department's response is that the Department's intent was to assign relative priorities to each MRS, not to develop a one-N listing of priorities. If the latter had been the intent, the number of possible outcomes would have become unwieldy.

One commenter maintained that the module with the lowest numerical priority value should not determine the MRS priority. The commenter's view is that this approach is intrinsically flawed because it fails to consider the cumulative risk posed by the two modules having a lesser priority ranking, even though those risks may be significant, and when combined, may be greater than that posed by the third module. The commenter suggested that all module priority scores be considered cumulatively in determining the priority for establishing which MRS presents the greatest overall hazard. The Department acknowledges the commenter's concern that there is a cumulative aspect to the hazards evaluated by each module. During the development of the rule, the Department considered using a cumulative total to assign the priority but was unable to define the mathematical relationship between the three modules in a manner that appeared rational or acceptable to the states, tribes, and others consulted during the development. Therefore, the Department's approach is to assign the priority based on the highest hazard posed by the conditions at the site.

F. Section 179.7. Sequencing

Two commenters stated that although the factors to be considered in making sequencing decisions include the ''reasonably anticipated future land use,'' land use assumptions, even reasonable ones, may change and need to be reconsidered. The Department's response is that the rule is used to assign to each MRS a relative priority, given the associated risks. To the extent any specific factors considered in application of the rule change, and that change affects the priority assigned to an MRS, the annual reexamination of assigned priorities should identify and consider the change. As a rule, the Department will address those sites with the highest risk first. Sequencing decisions are, however, often driven by other factors. Although sequencing decisions may change as relative priorities change, once a sequencing decision is made and execution of the munitions response has begun, it is unlikely that a change in relative priority would affect the sequencing decision.

One commenter noted that the proposed rule required the Department to report the results of sequencing; however, there is no mention of how the Department will make available all the results of the ranking. In response, the Department will compile the sequencing results and make them available to the public.

V. Administrative Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order 12866 (58 FR 51735 [October 4, 1993]) requires each agency taking regulatory action to determine whether that action is ''significant.'' The agency must submit any regulatory actions that qualify as ''significant'' to the Office of Management and Budget (OMB) for review, assess the costs and benefits anticipated as a result of the proposed action, and otherwise ensure that the action meets 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 effect 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 Department has determined that the rule is not a significant rule under Executive Order 12866 because it is not likely to result in a rule that will meet any of the four prerequisites.

(1) The rule will not 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.

The primary effect on the economy will be the necessity for state and/or local governments to conduct oversight of the environmental restoration activities. The Department previously determined that the rule does not place a burden in excess of $100 million each year on state, local, or tribal governments. The changes from the proposed rule do not significantly change the analysis conducted in support of the proposed rule, which showed that the effects on the economy as a whole, any particular sector of the economy, productivity, competition, or jobs are not significant. In addition, because the one impact that was identified, costs for state oversight are reimbursable through the Defense and State Memorandum of Agreement (DSMOA) program, the overall impact to any individual state is minimal.

Similarly, the previous determination that the proposed rule does not have a direct adverse effect on the environment, public health, and safety remains unchanged by the final rule. Any adverse effects were either a result of the actions that caused the UXO, DMM, or MC to be present at the MRS (e.g., the site's use as a military range, treatment of waste military munitions at the site) , which predate the application of the rule, or are the result of the munitions response activities that are implemented after the application of the rule. In the latter case, munitions response activities are performed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), a process that fully considers the overall impacts to human health and the environment posed by UXO, DMM, or MC and the response to such.

For these reasons, the Department has determined that the rule will not 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) The rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementation of the rule will not create a serious inconsistency or otherwise interfere with another agency's action because the Department has lead authority for administering the DERP under 10 U.S.C. 2701(a)(1). The DERP statute delineates the responsibilities of the Department and authority of U.S. EPA to some extent. The Department is required by 10 U.S.C. 2701(a)(3) to consult with the U.S. EPA in its administration of the environmental restoration program. Further, Section 2701(c)(2) of the statute gives the Department the responsibility of conducting environmental restoration activities on all properties owned or leased by it, except those for which U.S. EPA has entered into a settlement with a potentially responsible party. The rule's ranking system will not interfere with the Hazard Ranking System (HRS) maintained by the U.S. EPA because each serves its own purpose. U.S. EPA uses the HRS to place uncontrolled waste sites on the National Priorities List (NPL). U.S. EPA does not use the HRS to determine the priority in funding U.S. EPA remedial response actions. The Department will use the rule to assign a relative priority to each MRS based on the risks posed at each MRS, relative to the risks posed at other MRSs, and may use the rule as a basis for determining which MRS will receive funding. The Department's use of the rule should not interfere with U.S. EPA's use of the HRS. The Department action may interfere with U.S. EPA action in a situation where U.S. EPA decides to pursue response action at an MRS that the Department has designated as a low priority. Where this occurs, the Department will cooperate, to the extent possible, with U.S. EPA and rely on existing interagency processes to reach agreement on MRS priorities and response actions. Based on the above reasoning, the Department has determined that there is minimal potential for inconsistencies or interference with action by any other agency.

(3) The rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

The rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof because no entitlements, grants, user fees, or loan programs are invoked through prioritization of each MRS for response activities.

(4) The rule will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Finally, the rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Congress has already established the requirement for environmental restoration of MRSs and for the Department's development of a method to assign each MRS a relative priority. The rule is merely a method for the Department to determine a relative priority of an MRS for response action. The Department has identified no novel legal or policy issues that this rule will create on either an MRS-specific basis or overall. Nor has the Department identified any novel legal or policy issues arising out of the President's priorities or principles set forth in the Regulatory Impact Analysis.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996), requires that an agency conduct a regulatory flexibility analysis when publishing a notice of rulemaking for any proposed or final rule. The regulatory flexibility analysis determines the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). SBREFA amended the Regulatory Flexibility Act to require federal agencies to state the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Department hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. The nature of the rule provides the factual basis for a determination that no regulatory flexibility analysis is required. The rule merely provides a procedure by which the Department may assign a relative priority to each MRS for response actions. No costs are directly imposed on small entities nor is any action directly required of small entities through this rule. Because the Department bears the financial responsibility for remediating MRSs, and the source of its funding is Congress, implementation of the rule will not directly affect small entities in a financial manner. For the foregoing reasons, the Department believes that the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal

governments and the private sector. Section 202 of the UMRA requires that, prior to promulgating 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, the agency must prepare a written statement, including a cost-benefit analysis of the rule. Under Section 205 of the UMRA, the Department must also identify and consider a reasonable number of regulatory alternatives to the rule and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. Certain exceptions to Section 205 exist. For example, when the requirements of Section 205 are inconsistent with applicable law, Section 205 does not apply. In addition, an agency may adopt an alternative other than the least costly, most cost-effective, or least burdensome in those cases where the agency publishes with the final rule an explanation of why such alternative was not adopted. Section 203 of the UMRA requires that the agency develop a small government agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The small government agency plan must include procedures for notifying potentially affected small governments, providing officials of affected small governments with the opportunity for meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Department has determined that the 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. The term ''federal mandate'' means any provision in statute or regulation or any federal court ruling that imposes ''an enforceable duty'' upon state, local, or tribal governments, and includes any condition of federal assistance or a duty arising from participation in a voluntary federal program that imposes such a duty. The rule does not contain a federal mandate because it imposes no enforceable duty upon state, tribal, or local governments. The Department is responsible for funding munitions responses and imposes no costs on other entities by prioritizing MRSs using the rule. The Department recognizes that the state, local, or tribal government may expend funds to conduct oversight of the response activities. The rule, however, does not require such oversight. To the degree such oversight is required, it is required by preexisting law on which the rule has no effect.

D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. The term ''collection of information'' includes collection of information from ten or more persons. The Department has determined that the PRA does not apply to this rule because, although the Department will collect information on the MRS, it does not mandate that any person supply information. All information collected from persons will be voluntary, for example, through an interview. Therefore, the PRA does not apply to the rule.

E. 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 federal agencies to use technical standards developed by voluntary consensus standards bodies in its regulatory activities, except in those cases in which using such standards would be inconsistent with applicable law or otherwise impractical. ''Technical standards'' means performance-based or design-specific technical specifications and related management systems practices. Voluntary consensus means that the technical standards are developed or adopted by voluntary consensus standards organizations. In those cases in which a federal agency does not use voluntary consensus standards that are available and applicable, the agency must provide OMB with an explanation.

The rule does not involve performance-based or design-specific technical specifications or related management systems practices. The values for relative risk used in the HHE module, to the extent they qualify as technical standards, were formed through consensus. The rule is therefore in compliance with the NTTAA.

F. Environmental Justice Requirements Under Executive Order 12898

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' a federal agency must, where practicable and appropriate, collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, federal agencies must then use this information to determine whether their activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

The Department believes that implementation of the rule will address environmental justice concerns in several ways. First, the rule will address environmental justice by ensuring that prioritization is based primarily on risk to the human health and environment of all populations. The Department recognizes that prioritization of MRSs for response action could result in a low-priority designation for some MRSs located in low-income or minority neighborhoods. Under the risk-based approach, such prioritization could only be viewed as environmental injustice if low-income and minority populations were disproportionately located near low-risk MRSs. However, should this be the case, the final rule would allow the Department to consider this fact in its sequencing decisions. Second, the Department has reserved a step in the rule for consideration of environmental justice concerns, having supplemented the risk-based prioritization decision with consideration of whether low-income or minority populations are near the MRS in question. Third, because the rule will provide the Department with an established method for choosing which MRSs to address first, it will ensure uniformity among decisions and eliminate the potential for intentional discrimination against low-income and minority populations. Finally, the Department's engagement with various stakeholders, most notably tribal governments, in developing the rule has helped to build consideration of environmental justice concerns into the rule.

The Department plans to continue to study the environmental justice effects once the rule is implemented. Until that time, no data exist regarding whether low-income and minority populations live near high-risk MRSs as opposed to low-risk MRSs. As such, there is

currently no way of determining whether generally focusing response efforts first at those MRSs that pose a relatively higher risk will in any way adversely affect these or any particular segment of the population. The Department decided to include environmental justice considerations in the body of the proposed rule as a precautionary measure, but will examine the effect of the rule on low-income and minority populations, once the Department has implemented it and has compiled data from which to draw.

At this time, the Department believes that no action will directly result from the rule that will have a disproportionately high and adverse human health and environmental effect on any segment of the population. The Department will examine, however, the effects of implementation to ensure that no disproportionately high and adverse human health or environmental effect occurs.

G. Federalism Considerations Under Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), establishes certain requirements for federal agencies issuing regulations, legislative comments, proposed legislation, or other policy statements or actions that have ''federal implications.'' Under the Executive Order, any of these agency documents or actions have ''federal implications'' when they 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.'' Section 6 of the Executive Order prohibits any agency from issuing a regulation that has federal implications, imposes substantial direct compliance costs on state and local governments, and is not required by statute. Such a regulation may be issued only if the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency consults with state and local officials early in the process of developing the proposed regulation. Further, a federal agency may issue a regulation that has federalism implications and preempts state law only if the agency consults with state and local officials early in the process of developing the proposed regulation.

The rule does not have federalism implications because 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. The statute authorizing the Department's environmental restoration program, 10 U.S.C. 2701, clearly defines the role and responsibilities of the Department with respect to state and local governments. The role and primary responsibility of the Department is to implement an appropriate environmental restoration program at MRSs. The Department funds environmental restoration activities and does not directly affect the states in any manner. The only potential dispute regarding distribution of power may arise where the state attempts to require the Department to respond to an MRS under a state hazardous waste law, and the Department has not ranked the MRS as a high priority or allocated funding for environmental restoration of the MRS. Such a situation, however, would be dealt with per established legal principles regarding the relationship of states to the federal government. The rule does not alter this relationship. Additionally, it would not be appropriate for the rule to attempt to assign roles to the Department or any state because such assignment of roles is outside the scope of the statutory mandate. The rule does not impose direct compliance costs on state or local governments because the Department funds environmental restoration activities.

Finally, development of a method for prioritizing action at MRSs was specifically required by statute. Therefore, the requirements of the Executive Order, Section 6, do not apply to the rule.

List of Subjects in 32 CFR Part 179

Arms and munitions, Environmental protection, Government property, Military personnel.

■ Accordingly, 32 CFR part 179 is added to Chapter 1, Subchapter H to read as follows:

PART 179—MUNITIONS RESPONSE SITE PRIORITIZATION PROTOCOL (MRSPP)

Sec.

179.1. Purpose.
179.2. Applicability and scope.
179.3. Definitions.
179.4. Policy.
179.5. Responsibilities.
179.6. Procedures.
179.7. Sequencing.
Appendix A to Part 179—Tables of the Munitions Response Site Prioritization Protocol (MRSPP).

Authority: 10 U.S.C. 2710 *et seq.*

§ 179.1 Purpose.

The Department of Defense (the Department) is adopting this Munitions Response Site Prioritization Protocol (MRSPP) (hereinafter referred to as the ''rule'') under the authority of 10 U.S.C. 2710(b). Provisions of 10 U.S.C. 2710(b) require that the Department assign to each defense site in the inventory required by 10 U.S.C. 2710(a) a relative priority for response activities based on the overall conditions at each location and taking into consideration various factors related to safety and environmental hazards.

§ 179.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies and the Department Field Activities, and any other Department organizational entity or instrumentality established to perform a government function (hereafter referred to collectively as the ''Components'').

(b) The rule in this part shall be applied at all locations:

(1) That are, or were, owned by, leased to, or otherwise possessed or used by the Department, and

(2) That are known to, or suspected of, containing unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC), and

(3) That are included in the inventory established pursuant to 10 U.S.C. 2710(a).

(c) The rule in this part shall not be applied at the locations not included in the inventory required under 10 U.S.C. 2710(a). The locations not included in the inventory are:

(1) Locations that are not, or were not, owned by, leased to, or otherwise possessed or used by the Department,

(2) Locations neither known to contain, or suspected of containing, UXO, DMM, or MC,

(3) Locations outside the United States,

(4) Locations where the presence of military munitions results from combat operations,

(5) Currently operating military munitions storage and manufacturing facilities,

(6) Locations that are used for, or were permitted for, the treatment or disposal of military munitions, and

(7) Operational ranges.

§ 173.3 Definitions.

This part includes definitions for many terms that clarify its scope and applicability. Many of the terms relevant to this part are already defined, either in 10 U.S.C. 101, 10 U.S.C.

2710(e), or the Code of Federal Regulations. Where this is the case, the statutory and regulatory definitions are repeated here strictly for ease of reference. Citations to the U.S. Code or the Code of Federal Regulations are provided with the definition, as applicable. Unless used elsewhere in the U.S. Code or the Code of Federal Regulations, these terms are defined only for purposes of this part.

Barrier means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast-moving water), a man-made obstacle or obstacles (*e.g.*, fencing), and combinations of natural and man-made obstacles.

Chemical agent (CA) means a chemical compound (to include experimental compounds) that, through its chemical properties produces lethal or other damaging effects on human beings, is intended for use in military operations to kill, seriously injure, or incapacitate persons through its physiological effects. Excluded are research, development, testing and evaluation (RDTE) solutions; riot control agents; chemical defoliants and herbicides; smoke and other obscuration materials; flame and incendiary materials; and industrial chemicals. (This definition is based on the definition of ''chemical agent and munition'' in 50 U.S.C. 1521(j)(1).)

Chemical Agent (CA) Hazard is a condition where danger exists because CA is present in a concentration high enough to present potential unacceptable effects (*e.g.*, death, injury, damage) to people, operational capability, or the environment.

Chemical Warfare Materiel (CWM) means generally configured as a munition containing a chemical compound that is intended to kill, seriously injure, or incapacitate a person through its physiological effects. CWM includes V- and G-series nerve agents or H-series (mustard) and L-series (lewisite) blister agents in other-than-munition configurations; and certain industrial chemicals (*e.g.*, hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)) configured as a military munition. Due to their hazards, prevalence, and military-unique application, chemical agent identification sets (CAIS) are also considered CWM. CWM does not include riot control devices; chemical defoliants and herbicides; industrial chemicals (*e.g.*, AC, CK, or CG) not configured as a munition; smoke and other obscuration-producing items; flame and incendiary-producing items; or soil, water, debris, or other media contaminated with low concentrations of chemical agents where no CA hazards exist. For the purposes of this Protocol, CWM encompasses four subcategories of specific materials:

(1) *CWM, explosively configured* are all munitions that contain a CA fill and any explosive component. Examples are M55 rockets with CA, the M23 VX mine, and the M360 105-mm GB artillery cartridge.

(2) *CWM, nonexplosively configured* are all munitions that contain a CA fill, but that do not contain any explosive components. Examples are any chemical munition that does not contain explosive components and VX or mustard agent spray canisters.

(3) *CWM, bulk container* are all non-munitions-configured containers of CA (e.g., a ton container) and CAIS K941, toxic gas set M–1 and K942, toxic gas set M–2/E11.

(4) *CAIS* are military training aids containing small quantities of various CA and other chemicals. All forms of CAIS are scored the same in this rule, except CAIS K941, toxic gas set M–1; and CAIS K942, toxic gas set M–2/E11, which are considered forms of CWM, bulk container, due to the relatively large quantities of agent contained in those types of sets.

Components means the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, the Department Field Activities, and any other Department organizational entity or instrumentality established to perform a government function.

Defense site means locations that are or were owned by, leased to, or otherwise possessed or used by the Department. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions. (10 U.S.C. 2710(e)(1))

Discarded military munitions (DMM) means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include UXO, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of consistent with applicable environmental laws and regulations. (10 U.S.C. 2710(e)(2))

Explosive hazard means a condition where danger exists because explosives are present that may react (*e.g.,* detonate, deflagrate) in a mishap with potential unacceptable effects (*e.g.,* death, injury, damage) to people, property, operational capability, or the environment.

Military munitions means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants; explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents; chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, and demolition charges; and devices and components of any item thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, other than nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) have been completed. (10 U.S.C. 101(e)(4))

Military range means designated land and water areas set aside, managed, and used to research, develop, test, and evaluate military munitions, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. (40 CFR 266.201)

Munitions and explosives of concern distinguishes specific categories of military munitions that may pose unique explosives safety risks, such as UXO, as defined in 10 U.S.C. 101(e)(5); discarded military munitions, as defined in 10 U.S.C. 2710(e)(2); or munitions constituents (*e.g.,* TNT, RDX), as defined in 10 U.S.C. 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

Munitions constituents means any materials originating from UXO, discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710(e)(3))

Munitions response means response actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human

health, or environmental risks presented by UXO, discarded military munitions (DMM), or munitions constituents (MC), or to support a determination that no removal or remedial action is required.

Munitions response area (MRA) means any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples are former ranges and munitions burial areas. An MRA comprises one or more munitions response sites.

Munitions response site (MRS) means a discrete location within an MRA that is known to require a munitions response.

Operational range means a range that is under the jurisdiction, custody, or control of the Secretary of Defense and that is used for range activities, or although not currently being used for range activities, that is still considered by the Secretary to be a range and has not been put to a new use that is incompatible with range activities. (10 U.S.C. 101(e)(3))

Range means a designated land or water area that is set aside, managed, and used for range activities of the Department of Defense. The term includes firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access, and exclusionary areas. The term also includes airspace areas designated for military use in accordance with regulations and procedures prescribed by the Administrator of the Federal Aviation Administration. (10 U.S.C. 101(e)(1)(A) and (B))

Range activities means research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of members of the armed forces in the use and handling of military munitions, other ordnance, and weapons systems. (10 U.S.C. 101(3)(2))

Unexploded ordnance (UXO) means military munitions that:

(1) Have been primed, fuzed, armed, or otherwise prepared for action;

(2) Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(3) Remain unexploded, whether by malfunction, design, or any other cause. (10 U.S.C. 101(e)(5))

United States means, in a geographic sense, the states, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States. (10 U.S.C. 2710(e)(10))

§ 179.4 Policy.

(a) In assigning a relative priority for response activities, the Department generally considers those MRSs posing the greatest hazard as being the highest priority for action. The priority assigned should be based on the overall conditions at each MRS, taking into consideration various factors relating to safety and environmental hazard potential.

(b) In addition to the priority assigned to an MRS, other considerations (*e.g.,* availability of specific equipment, intended reuse, stakeholder interest) can affect the sequence in which munitions response actions at a specific MRS are funded.

(c) It is Department policy to ensure that U.S. EPA, other federal agencies (as appropriate or required), state regulatory agencies, tribal governments, local restoration advisory boards or technical review committees, and local stakeholders are offered opportunities to participate in the application of the rule in this part and making sequencing recommendations.

§ 179.5 Responsibilities.

Each Component shall:

(a) Apply the rule in this part to each MRS under its administrative control when sufficient data are available to populate all the data elements within any or all of the three hazard evaluation modules that comprise the rule. Upon further delineation and characterization of an MRA into more than one MRS, Components shall reapply the rule to all MRSs within the MRA. In such cases where data are not sufficient to populate one or two of the hazard evaluation modules (*e.g.,* there are no constituent sampling data for the Health Hazard Evaluation [HHE] module), Components will assign a priority based on the hazard evaluation modules evaluated and reapply the rule once sufficient data are available to apply the remaining hazard evaluation modules.

(b) Ensure that the total acreage of each MRA is evaluated using this rule (i.e., ensure the all MRSs within the MRA are evaluated).

(c) Ensure that EPA, other federal agencies (as appropriate or required), state regulatory agencies, tribal governments, local restoration advisory boards or technical review committees, local community stakeholders, and the current landowner (if the land is outside Department control) are offered opportunities as early as possible and throughout the process to participate in the application of the rule and making sequencing recommendations.

(1) To ensure EPA, other federal agency, state regulatory agencies, tribal governments, and local government officials are aware of the opportunity to participate in the application of the rule, the Component organization responsible for implementing a munitions response at the MRS shall notify the heads of these organizations (or their designated point of contact), as appropriate, seeking their involvement prior to beginning prioritization. Records of the notification will be placed in the Administrative Record and Information Repository for the MRS.

(2) Prior to beginning prioritization, the Component organization responsible for implementing a munitions response at the MRS shall publish an announcement in local community publications requesting information pertinent to prioritization or sequencing decisions to ensure the local community is aware of the opportunity to participate in the application of the rule.

(d) Establish a quality assurance panel of Component personnel to review, initially, all MRS prioritization decisions. Once the Department determines that its Components are applying the rule in a consistent manner and the rule's application leads to decisions that are representative of site conditions, the Department may establish a sampling-based approach for its Components to use for such reviews. This panel reviewing the priority assigned to an MRS shall not include any participant involved in applying the rule to that MRS. If the panel recommends a change that results in a different priority, the Component shall report, in the inventory data submitted to the Office of the Deputy Under Secretary of Defense (Installations & Environment) (ODUSD[I&E]), the rationale for this change. The Component shall also provide this rationale to the appropriate regulatory agencies and involved stakeholders for comment before finalizing the change.

(e) Following the panel review, submit the results of applying the rule along with the other inventory data that 10 U.S.C. 2710(c) requires be made publicly available, to the ODUSD(I&E). The ODUSD(I&E) shall publish this information in the report on environmental restoration activities for that fiscal year. If sequencing decisions result in action at an MRS with a lower MRS priority ahead of an MRS with a higher MRS priority, the Component shall provide specific justification to the ODUSD(I&E).

(f) Document in a Management Action Plan (MAP) or its equivalent all aspects

of the munitions responses required at all MRSs for which that MAP is applicable. Department guidance requires that MAP be developed and maintained at an installation (or Formerly Used Defense Site [FUDS] property) level and address each site at that installation or FUDS. For the FUDS program, a statewide MAP may also be developed.

(g) Develop sequencing decisions at installations and FUDS with input from appropriate regulators and stakeholders (*e.g.,* community members of an installation's restoration advisory board or technical review committee), and document this development in the MAP. Final sequencing may be impacted by Component program management considerations. If the sequencing of any MRS is changed from the sequencing reflected in the current MAP, the Component shall provide information to the appropriate regulators and stakeholders documenting the reasons for the sequencing change, and shall request their review and comment on that decision.

(h) Ensure that information provided by regulators and stakeholders that may influence the priority assigned to an MRS or sequencing decision concerning an MRS is included in the Administrative Record and the Information Repository.

(i) Review each MRS priority at least annually and update the priority as necessary to reflect new information. Reapplication of the rule is required under any of the following circumstances:

(1) Upon completion of a response action that changes site conditions in a manner that could affect the evaluation under this rule.

(2) To update or validate a previous evaluation at an MRS when new information is available.

(3) To update or validate the priority assigned where that priority has been previously assigned based on evaluation of only one or two of the three hazard evaluation modules.

(4) Upon further delineation and characterization of an MRA into MRSs.

(5) To categorize any MRS previously classified as ''evaluation pending.''

§ 179.6 Procedures.

The rule in this part comprises the following three hazard evaluation modules.

(a) Explosive Hazard Evaluation (EHE) module.

(1) The EHE module provides a single, consistent, Department-wide approach for the evaluation of explosive hazards. This module is used when there is a known or suspected presence of an explosive hazard. The EHE module is composed of three factors, each of which has two to four data elements that are intended to assess the specific conditions at an MRS. These factors are:

(i) *Explosive hazard,* which has the data elements *Munitions Type* and *Source of Hazard* and constitutes 40 percent of the EHE module score. (See Appendix A to this part, Tables 1 and 2.)

(ii) *Accessibility,* which has the data elements *Location of Munitions, Ease of Access,* and *Status of Property* and constitutes 40 percent of the EHE module score. (See Appendix A, Tables 3, 4, and 5.)

(iii) Receptors, which has the data elements *Population Density, Population Near Hazard, Types of Activities/Structures,* and *Ecological and/or Cultural Resources* and constitutes 20 percent of the EHE module score. (See Appendix A, Tables 6, 7, 8, and 9.)

(2) Based on MRS-specific information, each data element is assigned a numeric score, and the sum of these score is the EHE module score. The EHE module score results in an MRS being placed into one of the following ratings. (See Appendix A, Table 10.)

(i) *EHE Rating A (Highest)* is assigned to MRSs with an EHE module score from 92 to 100.

(ii) *EHE Rating B* is assigned to MRSs with an EHE module score from 82 to 91.

(iii) *EHE Rating C* is assigned to MRSs with an EHE module score from 71 to 81.

(iv) *EHE Rating D* is assigned to MRSs with an EHE module score from 60 to 70.

(v) *EHE Rating E* is assigned to MRSs with an EHE module score from 48 to 59.

(vi) *EHE Rating F* is assigned to MRSs with an EHE module score from 38 to 47.

(vii) *EHE Rating G (Lowest)* is assigned to MRSs with an EHE module score less than 38.

(3) There are also three other possible outcomes for the EHE module:

(i) *Evaluation pending.* This category is used when there are known or suspected UXO or DMM, but sufficient information is not available to populate the nine data elements of the EHE module.

(ii) *No longer required.* This category is reserved for MRSs that no longer require an assigned priority because the Department has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No known or suspected explosive hazard.* This category is reserved for MRSs that do not require evaluation under the EHE module.

(4) The EHE module rating shall be considered with the CHE and HHE module ratings to determine the MRS priority.

(5) MRSs lacking information for determining an EHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until an EHE module rating is assessed, MRSs shall be rated as ''evaluation pending'' for the EHE module.

(b) Chemical Warfare Materiel Hazard Evaluation (CHE) module. (1) The CHE module provides an evaluation of the chemical hazards associated with the physiological effects of CWM. The CHE module is used only when CWM are known or suspected of being present at an MRS. Like the EHE module, the CHE module has three factors, each of which has two to four data elements that are intended to assess the conditions at an MRS.

(i) *CWM hazard,* which has the data elements *CWM Configuration* and *Sources of CWM* and constitutes 40 percent of the CHE score. (See Appendix A to this part, Tables 11 and 12.)

(ii) *Accessibility,* which focuses on the potential for receptors to encounter the CWM known or suspected to be present on an MRS. This factor consists of three data elements, *Location of CWM, Ease of Access,* and *Status of Property,* and constitutes 40 percent of the CHE score. (See Appendix A, Tables 13, 14, and 15.)

(iii) *Receptor,* which focuses on the human and ecological populations that may be impacted by the presence of CWM. It has the data elements *Population Density, Population Near Hazard, Types of Activities/Structures,* and *Ecological and/or Cultural Resources* and constitutes 20 percent of the CHE score. (See Appendix A, Tables 16, 17, 18, and 19.)

(2) Similar to the EHE module, each data element is assigned a numeric score, and the sum of these scores (*i.e.*, the CHE module score) is used to determine the CHE rating. The CHE module score results in an MRS being placed into one of the following ratings. (See Appendix A, Table 20.)

(i) *CHE Rating A (Highest)* is assigned to MRSs with a CHE score from 92 to 100.

(ii) *CHE Rating B* is assigned to MRSs with a CHE score from 82 to 91.

(iii) *CHE Rating C* is assigned to MRSs with a CHE score from 71 to 81.

(iv) *CHE Rating D* is assigned to MRSs with a CHE score from 60 to 70.

(v) *CHE Rating E* is assigned to MRSs with a CHE score from 48 to 59.

(vi) *CHE Rating F* is assigned to MRSs with a CHE score from 38 to 47.

(vii) *CHE Rating G (Lowest)* is assigned to MRSs with a CHE score less than 38.

(3) There are also three other potential outcomes for the CHE module:

(i) *Evaluation pending.* This category is used when there are known or suspected CWM, but sufficient information is not available to populate the nine data elements of the CHE module.

(ii) *No longer required.* This category is reserved for MRSs that no longer require an assigned priority because the Department has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No known or suspected CWM hazard.* This category is reserved for MRSs that do not require evaluation under the CHE module.

(4) The CHE rating shall be considered with the EHE module and HHE module ratings to determine the MRS priority.

(5) MRSs lacking information for assessing a CHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until a CHE module rating is assigned, the MRS shall be rated as ''evaluation pending'' for the CHE module.

(c) Health Hazard Evaluation (HHE) module.

(1) The HHE provides a consistent Department-wide approach for evaluating the relative risk to human health and the environment posed by MC. The HHE builds on the RRSE framework that is used in the Installation Restoration Program (IRP) and has been modified to address the unique requirements of MRSs. The HHE module shall be used for evaluating the potential hazards posed by MC and other chemical contaminants. The HHE module is intended to evaluate MC at sites. Any incidental nonmunitions-related contaminants may be addressed incidental to a munitions response under the MMRP.

(2) The module has three factors:

(i) Contamination Hazard Factor (CHF), which indicates MC, and any nonmunitions-related incidental contaminants present; this factor contributes a level of High (H), Middle (M), or Low (L) based on Significant, Moderate, or Minimal contaminants present, respectively. (See Appendix A to this part, Table 21.)

(ii) Receptor Factor (RF), which indicates the receptors; this factor contributes a level of H, M, or L based on Identified, Potential, or Limited receptors, respectively. (See Appendix A, Table 21.)

(iii) Migration Pathway Factor (MPF), which indicates environmental migration pathways, and contributes a level of H, M, or L based on Evident, Potential or Confined pathways, respectively. (See Appendix A, Table 21.)

(3) The H, M, and L levels for the CHF, RF, and MPF are combined in a matrix to obtain composite three-letter combination levels that integrate considerations of all three factors. (See Appendix A, Table 22.)

(4) The three-letter combination levels are organized by frequency, and the resulting frequencies result in seven HHE ratings. (See Appendix A, Table 23.)

(i) HHE Rating A (Highest) is assigned to MRSs with an HHE combination level of high for all three factors.

(ii) HHE Rating B is assigned to MRSs with a combination level of high for CHF and RF and medium for MPF (HHM).

(iii) HHE Rating C is assigned to MRSs with a combination level of high for the CHF and RF and low for MPF (HHL), or high for CHF and medium for the RF and MPF (HMM).

(iv) HHE Rating D is assigned to MRSs with a combination level of high for the CHF, medium for the RF, and low for the MPF (HML), or medium for all three factors (MMM).

(v) HHE Rating E is assigned to MRSs with a combination level of high for the CHF and low for the RF and MPF (HLL), or medium for the CHF and RF and low for the MPF (MML).

(vi) HHE Rating F is assigned to MRSs with a combination level of medium for the CHF and low for the RF and MPF (MLL).

(vii) HHE Rating G (Lowest) is assigned to MRSs with a combination level of low for all three factors (LLL).

(5) The HHE three-letter combinations are replaced by the seven HHE ratings. (See Appendix A, Table 24.)

(6) There are also three other potential outcomes for the HHE module:

(i) *Evaluation pending.* This category is used when there are known or suspected MC, and any incidental nonmunitions-related contaminants present, but sufficient information is not available to determine the HHE module rating.

(ii) *No longer required.* This category is reserved for MRSs that no longer require an assigned MRS priority because the Department has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No known or suspected munitions constituent hazard.* This rating is reserved for MRSs that do not require evaluation under the HHE module.

(7) The HHE module rating shall be considered with the EHE and CHE module ratings to determine the MRS priority.

(8) MRSs lacking information sufficient for assessing an HHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until an HHR module rating is assigned, the MRS shall be classified as ''evaluation pending'' for the HHE module.

(d) Determining the MRS priority. (1) An MRS priority is determined based on integrating the ratings from the EHE, CHE, and HHE modules. Until all three hazard evaluation modules have been evaluated, the MRS priority shall be based on the results of the modules completed.

(2) Each MRS is assigned to one of eight MRS priorities based on the ratings of the three hazard evaluation modules, where Priority 1 indicates the highest potential hazard and Priority 8 the lowest potential hazard. Under the rule in this part, only MRSs with CWM can be assigned to Priority 1 and no MRS with CWM can be assigned to Priority 8. (See Appendix A to this part, Table 25.)

(3) An ''evaluation pending'' rating is used to indicate that an MRS requires further evaluation. This designation is only used when none of the three modules has a numerical rating (*i.e.*, 1 through 8) and at least one module is rated ''evaluation pending.'' The Department shall develop program metrics focused on reducing the number of MRSs with a status of ''evaluating pending'' for any of the three modules. (See Appendix A, Table 25.)

(4) A ''no longer required'' rating is used to indicate that an MRS no longer requires prioritization. The MRS will receive this rating when none of the three modules has a numerical (*i.e.*, 1 through 8) or an ''evaluation pending'' designation, and at least one of the modules is rated ''no longer required.''

(5) A rating of ''no known or suspected hazard'' is used to indicate that an MRS has no known or expected hazard. This designation is used only when the hazard evaluation modules are

rated as ''no known or suspected explosive hazard,'' ''no known or suspected CWM hazard,'' and ''no known or suspected MC hazard.'' (See Appendix A, Table 25.)

§ 179.7 Sequencing.

(a) *Sequencing considerations.* The sequencing of MRSs for action shall be based primarily on the MRS priority determined through applying the rule in this part. Generally, an MRS that presents a greater relative risk to human health, safety, or the environment will be addressed before an MRS that presents a lesser relative risk. Other factors, however, may warrant consideration when determining the sequencing for specific MRSs. In evaluating other factors in sequencing decisions, the Department will consider a broad range of issues. These other, or risk-plus factors, do not influence or change the MRS priority, but may influence the sequencing for action. Examples of factors that the Department may consider are:

(1) Concerns expressed by regulators or stakeholders.

(2) Cultural and social factors.

(3) Economic factors, including economic considerations pertaining to environmental justice issues, economies of scale, evaluation of total life cycle costs, and estimated valuations of long-term liabilities.

(4) Findings of health, safety, or ecological risk assessments or evaluations based on MRS-specific data.

(5) Reasonably anticipated future land use, especially when planning response actions, conducting evaluations of response alternatives, or establishing specific response action objectives.

(6) A community's reuse requirements at Base Realignment and Closure (BRAC) installations.

(7) Specialized considerations of tribal trust lands (held in trust by the United States for the benefit of any tribe or individual). The United States holds the legal title to the land and the tribe holds the beneficial interest.

(8) Implementation and execution considerations (*e.g.*, funding availability; the availability of the necessary equipment and people to implement a particular action; examination of alternatives to responses that entail significant capital investments, a lengthy period of operation, or costly maintenance; alternatives to removal or treatment of contamination when existing technology cannot achieve established standards [*e.g.*, maximum contaminant levels]).

(9) Mission-driven requirements.

(10) The availability of appropriate technology (*e.g.*, technology to detect, discriminate, recover, and destroy UXO).

(11) Implementing standing commitments, including those in formal agreements with regulatory agencies, requirements for continuation of remedial action operations until response objectives are met, other long-term management activities, and program administration.

(12) Established program goals and initiatives.

(13) Short-term and long-term ecological effects and environmental impacts in general, including injuries to natural resources.

(b) *Procedures and documentation for sequencing decisions.* (1) Each installation or FUDS is required to develop and maintain a Management Action Plan (MAP) or its equivalent. Sequencing decisions, which will be documented in the MAP at military installations and FUDS, shall be developed with input from appropriate regulators and stakeholders (*e.g.*, community members of an installation's restoration advisory board or technical review committee). If the sequencing of an MRS is changed from the sequencing reflected in the current MAP, information documenting the reasons for the sequencing change will be provided for inclusion in the MAP. Notice of the change in the sequencing shall be provided to those regulators and stakeholders that provided input to the sequencing process.

(2) In addition to the information on prioritization, the Components shall ensure that information provided by regulators and stakeholders that may influence the sequencing of an MRS is included in the Administrative Record and the Information Repository.

(3) Components shall report the results of sequencing to ODUSD(I&E) (or successor organizations). ODUSD(I&E) shall compile the sequencing results reported by each Component and publish the sequencing in the report on environmental restoration activities for that fiscal year. If sequencing decisions result in action at an MRS with a lower MRS priority ahead of an MRS with a higher priority, specific justification shall be provided to the ODUSD(I&E).

Appendix A to Part 179—Tables of the Munitions Response Site Prioritization Protocol

The tables in this Appendix are solely for use in implementing 32 CFR part 179.

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Table 1
Classifications Within the EHE Module *Munitions Type* Data Element

Classification	Description	Score
Sensitive	• All UXO that are considered likely to function upon any interaction with exposed persons (e.g., submunitions, 40mm high-explosive [HE] grenades, white phosphorus [WP] munitions, high-explosive antitank [HEAT] munitions, and practice munitions with sensitive fuzes, but excluding all other practice munitions). • All hand grenades containing energetic filler. • Bulk primary explosives, or mixtures of these with environmental media, such that the mixture poses an explosive hazard.	30
High explosive (used or damaged)	• All UXO containing a high-explosive filler (e.g., RDX, Composition B), that are not considered "sensitive." • All DMM containing a high-explosive filler that have: - Been damaged by burning or detonation - Deteriorated to the point of instability.	25
Pyrotechnic (used or damaged)	• All UXO containing pyrotechnic fillers other than white phosphorous (e.g., flares, signals, simulators, smoke grenades). • All DMM containing pyrotechnic fillers other than white phosphorous (e.g., flares, signals, simulators, smoke grenades) that have: - Been damaged by burning or detonation - Deteriorated to the point of instability.	20
High explosive (unused)	• All DMM containing a high explosive filler that: - Have not been damaged by burning or detonation - Are not deteriorated to the point of instability.	15
Propellant	• All UXO containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor). • All DMM containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor) that are: - Damaged by burning or detonation - Deteriorated to the point of instability.	15
Bulk secondary high explosives, pyrotechnics, or propellant	• All DMM containing mostly single-, double-, or triple-based propellant, or composite propellants (e.g., rocket motor), that are deteriorated. • Bulk secondary high explosives, pyrotechnic compositions, or propellant (not contained in a munition), or mixtures of these with environmental media such that the mixture poses an explosive hazard.	10

Table 1
Classifications Within the EHE Module *Munitions Type* Data Element

Classification	Description	Score
Pyrotechnic (not used or damaged)	• All DMM containing a pyrotechnic fillers (i.e., red phosphorous), other than white phosphorous filler, that: - Have not been damaged by burning or detonation - Are not deteriorated to the point of instability.	10
Practice	• All UXO that are practice munitions that are not associated with a sensitive fuze. • All DMM that are practice munitions that are not associated with a sensitive fuze and that have not: - Been damaged by burning or detonation - Deteriorated to the point of instability.	5
Riot control	• All UXO or DMM containing a riot control agent filler (e.g., tear gas).	3
Small arms	• All used munitions or DMM that are categorized as small arms ammunition. [Physical evidence or historical evidence that no other types of munitions (e.g., grenades, subcaliber training rockets, demolition charges) were used or are present on the MRS is required for selection of this category.]	2
Evidence of no munitions	• Following investigation of the MRS, there is physical evidence that there are no UXO or DMM present, or there is historical evidence indicating that no UXO or DMM are present.	0

Notes:

- *Former* (as in "former military range") means the MRS is a location that was (1) closed by a formal decision made by the Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.
- *Historical evidence* means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.
- *Practice munitions* means munitions that contain an inert filler (e.g., wax, sand, concrete), a spotting charge (i.e., a small charge of red phosphorus, photoflash powder, or black powder used to indicate the point of impact), and a fuze.
- The term *small arms ammunition* means ammunition, without projectiles that contain explosives (other than tracers), that is .50 caliber or smaller, or for shotguns.

Table 2
Classifications Within the EHE Module *Source of Hazard* Data Element

Classification	Description	Score
Former range	• The MRS is a former military range where munitions (including practice munitions with sensitive fuzes) have been used. Such areas include impact or target areas, associated buffer and safety zones, firing points, and live-fire maneuver areas.	10
Former munitions treatment (i.e., OB/OD) unit	• The MRS is a location where UXO or DMM (e.g., munitions, bulk explosives, bulk pyrotechnic, or bulk propellants) were burned or detonated for the purpose of treatment prior to disposal.	8
Former practice munitions range	• The MRS is a former military range on which only practice munitions without sensitive fuzes were used.	6
Former maneuver area	• The MRS is a former maneuver area where no munitions other than flares, simulators, smokes, and blanks were used. There must be evidence that no other munitions were used at the location to place an MRS into this category.	5
Former burial pit or other disposal area	• The MRS is a location where DMM were buried or disposed of (e.g., disposed of into a water body) without prior thermal treatment.	5
Former industrial operating facilities	• The MRS is a location that is a former munitions maintenance, manufacturing, or demilitarization facility.	4
Former firing points	• The MRS is a firing point, where the firing point is delineated as an MRS separate from the rest of a former military range.	4
Former missile or air defense artillery emplacements	• The MRS is a former missile defense or air defense artillery (ADA) emplacement not associated with a military range.	2
Former storage or transfer points	• The MRS is a location where munitions were stored or handled for transfer between different modes of transportation (e.g., rail to truck, truck to weapon system).	2
Former small arms range	• The MRS is a former military range where only small arms ammunition was used. [There must be evidence that no other types of munitions (e.g., grenades) were used or are present to place an MRS into this category.]	1
Evidence of no munitions	• Following investigation of the MRS, there is physical evidence that no UXO or DMM are present, or there is historical evidence indicating that no UXO or DMM are present.	0

Notes:

- *Former* (as in "former military range") means the MRS is a location that was (1) closed by a formal decision made by the Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.
- *Historical evidence* means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.
- *Practice munitions* means munitions that contain an inert filler (e.g., wax, sand, concrete), a spotting charge (i.e., a small charge of red phosphorus, photoflash powder, or black powder used to indicate the point of impact), and a fuze.
- The term *small arms ammunition* means ammunition, without projectiles that contain explosives (other than tracers), that is .50 caliber or below, or for shotguns.

Table 3
Classifications Within the EHE Module *Information on the Location of Munitions* Data Element

Classification	Description	Score
Confirmed surface	• Physical evidence indicates that there are UXO or DMM on the surface of the MRS. • Historical evidence (e.g., a confirmed incident report or accident report) indicates there are UXO or DMM on the surface of the MRS.	25
Confirmed subsurface, active	• Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS, and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed, in the future, by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or intrusive activities (e.g., plowing, construction, dredging) at the MRS are likely to expose UXO or DMM. • Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed, in the future, by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or intrusive activities (e.g., plowing, construction, dredging) at the MRS are likely to expose UXO or DMM.	20
Confirmed subsurface, stable	• Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed, in the future, by naturally occurring phenomena, or intrusive activities at the MRS are not likely to cause UXO or DMM to be exposed. • Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed, in the future, by naturally occurring phenomena, or intrusive activities at the MRS are not likely to cause UXO or DMM to be exposed.	15
Suspected (physical evidence)	• There is physical evidence (e.g., munitions debris, such as fragments, penetrators, projectiles, shell casings, links, fins), other than the documented presence of UXO or DMM, indicating that UXO or DMM may be present at the MRS.	10
Suspected (historical evidence)	• There is historical evidence indicating that UXO or DMM may be present at the MRS.	5
Subsurface, physical constraint	• There is physical or historical evidence indicating that UXO or DMM may be present in the subsurface, but there is a physical constraint (e.g., pavement, water depth over 120 feet) preventing direct access to the UXO or DMM.	2

Table 3
Classifications Within the EHE Module *Information on the Location of Munitions* Data Element

Classification	Description	Score
Small arms (regardless of location)	• The presence of small arms ammunition is confirmed or suspected, regardless of other factors such as geological stability. [There must be evidence that no other types of munitions (e.g., grenades) were used or are present at the MRS to place an MRS into this category.]	1
Evidence of no munitions	• Following investigation of the MRS, there is physical evidence that there are no UXO or DMM present, or there is historical evidence indicating that no UXO or DMM are present.	0

Notes:

- *Historical evidence* means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.
- *In the subsurface* means the munition (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.
- *On the surface* means the munition (i.e., a DMM or UXO) is (1) entirely or partially exposed above the ground surface (i.e., above the soil layer), or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).
- The term *small arms ammunition* means ammunition, without projectiles that contain explosives (other than tracers), that is .50 caliber or smaller, or for shotguns.

Table 4 Classifications Within the EHE Module *Ease of Access* Data Element		
Classification	Description	Score
No barrier	• There is no barrier preventing access to any part of the MRS (i.e., all parts of the MRS are accessible).	10
Barrier to MRS access is incomplete	• There is a barrier preventing access to parts of the MRS, but not the entire MRS.	8
Barrier to MRS access is complete, but not monitored	• There is a barrier preventing access to all parts of the MRS, but there is no surveillance (e.g., by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS.	5
Barrier to MRS access is complete and monitored	• There is a barrier preventing access to all parts of the MRS, and there is active, continual surveillance (e.g., by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS.	0
Notes: • *Barrier* means a natural obstacle or obstacles (e.g., difficult terrain, dense vegetation, deep or fast-moving water), a man-made obstacle or obstacles (e.g., fencing), or a combination of natural and man-made obstacles.		

Table 5 Classifications Within the EHE *Status of Property* Data Element		
Classification	Description	Score
Non-DoD control	• The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the Department. Examples are privately owned land or water bodies; land or water bodies owned or controlled by state, tribal, or local governments; and land or water bodies managed by other federal agencies.	5
Scheduled for transfer from DoD control	• The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the Department, and the Department plans to transfer that land or water body to the control of another entity (e.g., a state, tribal, or local government; a private party; another federal agency) within 3 years from the date the rule is applied.	3
DoD control	• The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the Department. With respect to property that is leased or otherwise possessed, the Department must control access to the MRS 24 hours per day, every day of the calendar year.	0

Table 6
Classifications Within the EHE Module *Population Density* Data Element

Classification	Definition	Score
> 500 persons per square mile	• There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	5
100 to 500 persons per square mile	• There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	3
< 100 persons per square mile	• There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	1

Notes:

- If an MRS is in more than one county, the Component will use the largest population value among those counties. If the MRS is within or borders a city or town, the population density for that city or town, instead of the county population density, is used.

Table 7
Classifications Within the EHE Module *Population Near Hazard* Data Element

Classification	Description	Score
26 or more structures	• There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	5
16 to 25	• There are 16 to 25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	4
11 to 15	• There are 11 to 15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	3
6 to 10	• There are 6 to 10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	2
1 to 5	• There are 1 to 5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	1
0	• There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	0

Notes:

- The term *inhabited structures* means permanent or temporary structures, other than military munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

Table 8
Classifications Within the EHE Module *Types of Activities/Structures* Data Element

Classification	Description	Score
Residential, educational, commercial, or subsistence	• Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with any of the following purposes: residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, playgrounds, community gathering areas, religious sites, or sites used for subsistence hunting, fishing, and gathering.	5
Parks and recreational areas	• Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with parks, nature preserves, or other recreational uses.	4
Agricultural, forestry	• Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with agriculture or forestry.	3
Industrial or warehousing	• Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with industrial activities or warehousing.	2
No known or recurring activities	• There are no known or recurring activities occurring up to two miles from the MRS's boundary or within the MRS's boundary.	1

Notes:

- The term *inhabited structures* means permanent or temporary structures, other than Department-related structures, that are routinely occupied by one or more persons for any portion of a day.

Table 9 Classifications Within the EHE Module *Ecological and/or Cultural Resources* Data Element		
Classification	Description	Score
Ecological and cultural resources present	• There are both ecological and cultural resources present on the MRS.	5
Ecological resources present	• There are ecological resources present on the MRS.	3
Cultural resources present	• There are cultural resources present on the MRS.	3
No ecological or cultural resources present	• There are no ecological resources or cultural resources present on the MRS.	0

Notes:

- *Ecological resources* means that (1) a threatened or endangered species (designated under the Endangered Species Act [ESA]) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.
- *Cultural resources* means there are recognized cultural, traditional, spiritual, religious, or historical features (e.g., structures, artifacts, symbolism) on the MRS. Requirements for determining if a particular feature is a cultural resource are found in *the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007*, and *the American Indian Religious Freedom Act*. As examples: American Indians or Alaska Natives deem an MRS to be of religious significance; there are areas used by American Indians or Alaska Natives for subsistence activities (e.g., hunting, fishing).

Table 10 Determining the EHE Rating from the EHE Module Score	
Overall EHE Module Score	EHE Rating
The MRS has an overall EHE module score from 92 to 100.	EHE Rating A
The MRS has an overall EHE module score from 82 to 91.	EHE Rating B
The MRS has an overall EHE module score from 71 to 81.	EHE Rating C
The MRS has an overall EHE module score from 60 to 70.	EHE Rating D
The MRS has an overall EHE module score from 48 to 59.	EHE Rating E
The MRS has an overall EHE module score from 38 to 47.	EHE Rating F
The MRS has an overall EHE module score less than 38.	EHE Rating G
Alternative Module Ratings	Evaluation Pending
	No Longer Required
	No Known or Suspected Explosive Hazard

Table 11
Classifications Within the CHE Module *CWM Configuration* Data Element

Classification	Description	Score
CWM, explosive configuration, either UXO or damaged DMM	The CWM known or suspected of being present at the MRS is: • Explosively configured CWM that are UXO (i.e., CWM/UXO). • Explosively configured CWM that are DMM (i.e., CWM/DMM) that have been damaged.	30
CWM mixed with UXO	• The CWM known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged, or nonexplosively configured CWM/DMM, or CWM not configured as a munition, that are commingled with conventional munitions that are UXO.	25
CWM, explosive configuration that are DMM (undamaged)	• The CWM known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged.	20
CWM, not explosively configured or CWM, bulk container	The CWM known or suspected of being present at the MRS is: • Nonexplosively configured CWM/DMM. • Bulk CWM/DMM (e.g., ton container).	15
CAIS K941 and CAIS K942	• The CWM/DMM known or suspected of being present at the MRS is CAIS K941-toxic gas set M-1 or CAIS K942-toxic gas set M-2/E11.	12
CAIS (chemical agent identification sets)	• Only CAIS, other than CAIS K941 and K942, are known or suspected of being present at the MRS.	10
Evidence of no CWM	• Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS.	0

Notes:

- The term *CWM/UXO* means CWM that are UXO.
- The notation *CWM/DMM* means CWM that are DMM, to include CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11.
- The term CAIS/DMM means CAIS, other than CAIS K941 and K942.
- *Historical evidence* means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.

Table 12
Classifications Within the CHE Module *Sources of CWM* Data Element

Classification	Description	Score
Live-fire involving CWM	• The MRS is a former military range that supported live-fire of explosively configured CWM and the CWM/UXO are known or suspected of being present on the surface or in the subsurface. • The MRS is a former military range that supported live-fire with conventional munitions, and CWM/DMM are on the surface or in the subsurface commingled with conventional munitions that are UXO.	10
Damaged CWM/DMM surface or subsurface	• There are damaged CWM/DMM on the surface or in the subsurface at the MRS.	10
Undamaged CWM/DMM surface	• There are undamaged CWM/DMM on the surface at the MRS.	10
CAIS/DMM surface	• There are CAIS/DMM on the surface.	10
Undamaged CWM/DMM, subsurface	• There are undamaged CWM/DMM in the subsurface at the MRS.	5
CAIS/DMM subsurface	• There are CAIS/DMM in the subsurface at the MRS.	5
Former CA or CWM Production Facilities	• The MRS is a facility that formerly engaged in production of CA or CWM, and CWM/DMM is suspected of being present on the surface or in the subsurface.	3
Former Research, Development, Testing, and Evaluation (RDT&E) facility using CWM	• The MRS is at a facility that formerly was involved in non-live-fire RDT&E activities (including static testing) involving CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface.	3
Former Training Facility using CWM or CAIS	• The MRS is a location that formerly was involved in training activities involving CWM and/or CAIS (e.g., training in recognition of CWA, decontamination training) and CWM/DMM or CAIS/DMM are suspected of being present on the surface or in the subsurface.	2
Former Storage or Transfer points of CWM	• The MRS is a former storage facility or transfer point (e.g., intermodal transfer) for CWM.	1
Evidence of no CWM	• Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS.	0

Notes:

- The term *CWM /UXO* means CWM that are UXO.
- The notation *CWM/DMM* means CWM that are DMM, to include CAIS K941, toxic gas set M-1; and K942, toxic gas set M-2/E11.
- The term CAIS/DMM means CAIS, other than CAIS K941 and K942.
- *Historical evidence* means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.
- *In the subsurface* means the CWM (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.
- *On the surface* means the CWM (i.e., a DMM or UXO) is (1) entirely or partially exposed above the ground surface (i.e., above the soil layer), or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).

Table 13
Classifications Within the CHE Module *Information on the Location of CWM* Data Element

Classification	Description	Score
Confirmed surface	• Physical evidence indicates that there are CWM on the surface of the MRS. • Historical evidence (e.g., a confirmed incident report or accident report) indicates there are CWM on the surface of the MRS.	25
Confirmed subsurface, active	• Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed, in the future, by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or intrusive activities (e.g., plowing, construction, dredging) at the MRS are likely to expose CWM. • Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed, in the future, by naturally occurring phenomena (e.g., drought, flooding, erosion, frost, heat heave, tidal action), or intrusive activities (e.g., plowing, construction, dredging) at the MRS are likely to expose CWM.	20
Confirmed subsurface, stable	• Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed, in the future, by naturally occurring phenomena, or intrusive activities at the MRS are not likely to cause CWM to be exposed. • Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed, in the future, by naturally occurring phenomena, or intrusive activities at the MRS are not likely to cause CWM to be exposed.	15
Suspected (physical evidence)	• There is physical evidence, other than the documented presence of CWM, indicating that CWM may be present at the MRS.	10
Suspected (historical evidence)	• There is historical evidence indicating that CWM may be present at the MRS.	5
Subsurface, physical constraint	• There is physical or historical evidence indicating that CWM may be present in the subsurface, but there is a physical constraint (e.g., pavement, water depth over 120 feet) preventing direct access to the CWM.	2

Table 13
Classifications Within the CHE Module *Information on the Location of CWM* Data Element

Classification	Description	Score
Evidence of no CWM	• Following investigation of the MRS, there is physical evidence that there is no CWM present or there is historical evidence indicating that no CWM are present.	0

Notes:

- *Historical evidence* means the investigation: (1) found written documents or records, (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- *Physical evidence* means: (1) recorded observations from on-site investigations, such as finding intact UXO or DMM, or munitions debris (e.g., fragments, penetrators, projectiles, shell casings, links, fins); (2) the results of field or laboratory sampling and analysis procedures; or (3) the results of geophysical investigations.
- *In the subsurface* means the CWM (i.e., a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.
- *On the surface* means the CWM (i.e., a DMM or UXO) is (1) entirely or partially exposed above the ground surface (i.e., above the soil layer), or (2) entirely or partially exposed above the surface of a water body (e.g., as a result of tidal activity).

Table 14
Classifications Within the CHE Module *Ease of Access* Data Element

Classification	Description	Score
No barrier	• There is no barrier preventing access to any part of the MRS (i.e., all parts of the MRS are accessible).	10
Barrier to MRS access is incomplete	• There is a barrier preventing access to parts of the MRS, but not the entire MRS.	8
Barrier to MRS access is complete, but not monitored	• There is a barrier preventing access to all parts of the MRS, but there is no surveillance (e.g., by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS.	5
Barrier to MRS access is complete and monitored	• There is a barrier preventing access to all parts of the MRS, and there is active continual surveillance (e.g., by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS.	0

Notes:

- *Barrier* means a natural obstacle or obstacles (e.g., difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (e.g., fencing), or a combination of natural and man-made obstacles.

Table 15
Classifications Within the CHE Module *Status of Property* Data Element

Classification	Description	Score
Non-DoD control	• The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the Department. Examples are privately owned land or water bodies; land or water bodies owned or controlled by state, tribal, or local governments; and land or water bodies managed by other federal agencies.	5
Scheduled for transfer from DoD control	• The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the Department, and the Department plans to transfer that land or water body to control of another entity (e.g., a state, tribal, or local government; a private party; another federal agency) within 3 years from the date the rule is applied.	3
DoD control	• The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the Department. With respect to property that is leased or otherwise possessed, the Department controls access to the property 24 hours per day, every day of the calendar year.	0

Table 16
Classifications Within the CHE Module *Population Density* Data Element

Classification	Definition	Score
> 500 persons per square mile	• There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	5
100 to 500 persons per square mile	• There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	3
< 100 persons per square mile	• There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	1

Notes:

- If an MRS is in more than one county, the Component will use the largest population value among those counties. If the MRS is within or borders a city or town, the population density for that city or town, instead of the county population density, is used.

Table 17
Classifications Within the CHE Module *Population Near Hazard* Data Element

Classification	Description	Score
26 or more structures	• There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	5
16 to 25	• There are 16 to 25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	4
11 to 15	• There are 11 to 15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	3
6 to 10	• There are 6 to 10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	2
1 to 5	• There are 1 to 5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	1
0	• There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	0

Notes:

- The term *inhabited structures* means permanent or temporary structures, other than military munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

Table 18
Classifications Within the CHE Module *Types of Activities/Structures* Data Element

Classification	Description	Score
Residential, educational, commercial, or subsistence	• Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with any of the following purposes: residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, playgrounds, community gathering areas, religious sites, or sites used for subsistence hunting, fishing, and gathering.	5
Parks and recreational areas	• Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with parks, nature preserves, or other recreational uses.	4
Agricultural, forestry	• Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary or within the MRS's boundary, that are associated with agriculture or forestry.	3
Industrial or warehousing	• Activities are conducted, or inhabited structures are located up to two miles from the MRS's boundary, or within the MRS's boundary, that are associated with industrial activities or warehousing.	2
No known or recurring activities	• There are no known or recurring activities occurring up to two miles from the MRS's boundary or within the MRS's boundary.	1

Notes:

- The term *inhabited structures* means permanent or temporary structures, other than Department-related structures, that are routinely occupied by one or more persons for any portion of a day.

Table 19 Classifications Within the CHE Module *Ecological and/or Cultural Resources* Data Element		
Classification	Description	Score
Ecological and cultural resources present	• There are both ecological and cultural resources present on the MRS.	5
Ecological resources present	• There are ecological resources present on the MRS.	3
Cultural resources present	• There are cultural resources present on the MRS.	3
No ecological or cultural resources present	• There are no ecological resources or cultural resources present on the MRS.	0

Notes:

- *Ecological resources* means that: (1) a threatened or endangered species (designated under the Endangered Species Act [ESA]) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.
- *Cultural resources* means there are recognized cultural, spiritual, traditional, religious, or historical features (e.g., structures, artifacts, symbolism) on the MRS. Requirements for determining if a particular feature is a cultural resource are found in *the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007*, and *the American Indian Religious Freedom Act*. As examples: American Indians or Alaska Natives deem an MRS to be of spiritual significance; there are areas that are used by American Indians or Alaska Natives for subsistence activities (e.g., hunting, fishing).

Table 20 Determining the CHE Rating from the CHE Module Score	
Overall CHE Module Score	CHE Rating
The MRS has an overall CHE module score from 92 to 100.	CHE Rating A
The MRS has an overall CHE module score from 82 to 91.	CHE Rating B
The MRS has an overall CHE module score from 71 to 81.	CHE Rating C
The MRS has an overall CHE module score from 60 to 70.	CHE Rating D
The MRS has an overall CHE module score from 48 to 59.	CHE Rating E
The MRS has an overall CHE module score from 38 to 47.	CHE Rating F
The MRS has an overall CHE module score less than 38.	CHE Rating G
Alternative Module Ratings	Evaluation Pending
	No Longer Required
	No Known or Suspected CWM Hazard

Table 21 HHE Factor Levels					
Contaminant Hazard Factor		Receptor Factor		Migration Pathway Factor	
Significant	High (H)	Identified	High (H)	Evident	High (H)
Moderate	Middle (M)	Potential	Middle (M)	Potential	Middle (M)
Minimal	Low (L)	Limited	Low (L)	Confined	Low (L)

Table 22 HHE Three-letter Combination Levels				
Contaminant Hazard Factor	Receptor Factor	Migration Pathway		
		Evident	Potential	Confined
Significant	Identified	HHH	HHM	HHL
	Potential	HHM	HMM	HML
	Limited	HHL	HML	HLL
Moderate	Identified	HHM	HMM	HML
	Potential	HMM	MMM	MML
	Limited	HML	MML	MLL
Minimal	Identified	HHL	HML	HLL
	Potential	HML	MML	MLL
	Limited	HLL	MLL	LLL

Table 23 HHE Module Ratings	
Combination	Rating
HHH	A
HHM	B
HHL	C
HMM	
HML	D
MMM	
HLL	E
MML	
MLL	F
LLL	G
Alternative Module Ratings	Evaluation Pending
	No Longer Required
	No Known or Suspected MC Hazard

Table 24
HHE Module Rating

Contaminant Hazard Factor	Receptor Factor	Migration Pathway		
		Evident	Potential	Confined
Significant	Identified	A	B	C
	Potential	B	C	D
	Limited	C	D	E
Moderate	Identified	B	C	D
	Potential	C	D	E
	Limited	D	E	F
Minimal	Identified	C	D	E
	Potential	D	E	F
	Limited	E	F	G

Table 25
MRS Priority Based on Highest Hazard Evaluation Module Rating

EHE Module Rating	Priority	CHE Module Rating	Priority	HHE Module Rating	Priority
Hazard Evaluation A (Highest)	2	Hazard Evaluation A (Highest)	1	Hazard Evaluation A (Highest)	2
Hazard Evaluation B	3	Hazard Evaluation B	2	Hazard Evaluation B	3
Hazard Evaluation C	4	Hazard Evaluation C	3	Hazard Evaluation C	4
Hazard Evaluation D	5	Hazard Evaluation D	4	Hazard Evaluation D	5
Hazard Evaluation E	6	Hazard Evaluation E	5	Hazard Evaluation E	6
Hazard Evaluation F	7	Hazard Evaluation F	6	Hazard Evaluation F	7
Hazard Evaluation G (Lowest)	8	Hazard Evaluation G (Lowest)	7	Hazard Evaluation G (Lowest) Low	8
Evaluation Pending		Evaluation Pending		Evaluation Pending	
No Longer Required		No Longer Required		No Longer Required	
No Known or Suspected Explosive Hazard		No Known or Suspected CWM Hazard		No Known or Suspected MC Hazard	

Dated: September 27, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD13–05–009]

RIN 1625–AA08

Special Local Regulations; Strait Thunder Performance, Port Angeles, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for the Strait Thunder Race held on the waters of Port Angeles Harbor, Port Angeles, Washington. These special local regulations limit the movement of non-participating vessels in the regulated race area and provide for a viewing area for spectator craft. This rule is needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective October 5, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–05–009 and are available for inspection or copying at Sector Seattle, 1519 Alaskan Way South, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Jes Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134 (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 27, 2005, we published a notice of proposed rulemaking (NPRM) entitled Strait Thunder Performance, Port Angeles, WA in the **Federal Register** (70 FR 122). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

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 the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. However, advance notifications will be made to users of the waterway via marine information broadcasts and area newspapers.

Background and Purpose

These hydroplane races pose several dangers to the public including excessive noise, objects falling from any accidents, and hydroplanes racing at high speeds in close proximity to other vessels. Accordingly, regulatory action is needed in order to provide for the safety of spectators and participants during the event.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM proposing this final rule.

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).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this portion of Port Angeles Harbor during the time this regulation is in effect. The zone will not have a significant economic impact due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) this rule would not have a significant economic impact on a substantial number of small entities.

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 the rule so they can better evaluate its effects on them 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 the person listed in the (**FOR FURTHER INFORMATION CONTACT**) section.

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 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 concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—MARINE EVENTS

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1

■ 2. Section 100.1307 is added to read as follows:

§ 100.1307 Special Local Regulations, Strait Thunder Performance, Port Angeles, WA.

(a) *Regulated Areas.* (1) The *race area* encompasses all waters located inside of a line connecting the following points located near Port Angeles, Washington:

Point 1: 48°07′24″ N, 123°25′32″ W;
Point 2: 48°07′26″ N, 123°24′35″ W;
Point 3: 48°07′12″ N, 123°25′31″ W;
Point 4: 48°07′15″ N, 123°24′34″ W.
[Datum: NAD 1983].

(2) The *spectator area* encompasses all waters located within a box bounded by the following points located near Port Angeles, Washington:

Point 1: 48°07′32″ N, 123°25′33″ W;
Point 2: 48°07′29″ N, 123°24′36″ W;
Point 3: 48°07′24″ N, 123°25′32″ W;
Point 4: 48°07′26″ N, 123°24′35″ W.
[Datum: NAD 1983.]

(b) *Definitions.* For the purpose of this section the following definitions apply:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Port Angeles. The Coast Guard Patrol Commander is empowered to control the movement of vessels in the regulated area.

(2) *Patrol Vessel* means any Coast Guard vessel, Coast Guard Auxiliary vessel, or other federal, state or local law enforcement vessel.

(c) *Special Local Regulations.* (1) Non-participant vessels are prohibited from entering the race area unless authorized by the Coast Guard Patrol Commander.

(2) Spectator craft may remain in the designated spectator area but must follow the directions of the Coast Guard Patrol Commander. Spectator craft entering, exiting or moving within the spectator area must operate at speeds, which will create a minimum wake, and not exceed seven knots. The maximum speed may be reduced at the discretion of the Patrol Commander.

(3) A succession of sharp, short signals by whistle or horn from a Patrol Vessel will serve as a signal to stop. Vessels signaled must stop and comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Coast Guard Patrol Commander may be assisted by other federal, state and local law enforcement agencies in enforcing this regulation.

(d) *Enforcement dates.* This section is enforced annually on the first or second Friday, Saturday, and Sunday in October from 9 a.m. until 5 p.m. The event is a three day event and the specific dates will be published each year in the **Federal Register**. In 2005, this section will be enforced from 9 a.m. until 5 p.m. on Friday, September 30th, to Sunday, October 2nd.

Dated: September 27, 2005.

R.R. Houck,

Rear Admiral, U.S. Coast Guard Commander, Thirteenth Coast Guard District.

[FR Doc. 05–20021 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–091]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain in the closed position from 11 p.m. on October 21, 2005 through 6 a.m. on October 24, 2005. This temporary deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from October 21, 2005 through October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

The owner of the bridge, New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operation regulations to facilitate scheduled bridge repairs, counterweight replacement. The bridge must remain in the closed position in order to perform this work.

Under this temporary deviation the NYCDOT Metropolitan Avenue Bridge may remain in the closed position from 11 p.m. on October 21, 2005 through 6 a.m. on October 24, 2005.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: September 23, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–19948 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–092]

Drawbridge Operation Regulations: Chelsea River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the P.J. McArdle Bridge, mile 0.3, across the Chelsea River between East Boston and Chelsea, Massachusetts. Under this temporary deviation the bridge may remain closed from 7 a.m. to 3 p.m., on October 24, 2005 and October 27, 2005. This temporary deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from October 24, 2005 through October 27, 2005.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The P.J. McArdle Bridge has a vertical clearance in the closed position of 21 feet at mean high water and 30 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.593.

The owner of the bridge, the City of Boston, requested a temporary deviation from the drawbridge operation regulations to facilitate scheduled bridge maintenance, bearing replacement.

Under this temporary deviation the P.J. McArdle Bridge may remain closed from 7 a.m. to 3 p.m., on October 24, 2005 and October 27, 2005.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: September 23, 2005.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 05–19947 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–061]

RIN 1625–AA09

Drawbridge Operation Regulations: Hackensack River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the Amtrak Portal Bridge at mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. This final rule allows the bridge owner to expand the two time periods in the morning and in the afternoon, Monday through Friday, when the bridge may remain closed to vessel traffic.

DATES: This rule is effective November 4, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–05–061) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Bridge Administrator, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 29, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Hackensack River, New Jersey, in the **Federal Register** (70 FR 43812). We received 30 comment letters in response to the notice of proposed rulemaking. All 30 comment letters were in favor of the proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Amtrak Portal Bridge has a vertical clearance of 23 feet at mean high water and 28 feet at mean low water in the closed position. The existing operating regulations are listed at 33 CFR 117.723(c).

The owner of the bridge, National Railroad Passenger Corporation (AMTRAK), requested a change to the drawbridge operation regulations that would expand the two time periods in the morning and afternoon, Monday through Friday, when the bridge may remain closed to vessel traffic.

Rail traffic during the morning and afternoon commuter periods has increased over the past several years. Bridge openings during the two commuter time periods have caused delays to rail traffic prompting the bridge owner to request the expansion of the two bridge closure periods in the morning and afternoon Monday through Friday.

The Coast Guard conducted two 90-day test deviations to help determine if the proposed drawbridge operation schedule changes would help facilitate

better rail traffic movement and not cause undue delays to vessel traffic.

On February 26, 2004, the Coast Guard published a temporary 90-day deviation, with request for comment, (69 FR 8817) to test changes to the drawbridge operation regulations for the Amtrak Portal Bridge identical to those proposed in this final rule. That temporary deviation was in effect from March 1, 2004, through May 29, 2004. We received nine comment letters in response to the temporary deviation. All the comment letters were in favor of making the tested drawbridge operation schedule a permanent rule change.

On November 23, 2004, we published a second 90-day deviation (69 FR 68079) to test the same drawbridge operation schedule as above during the winter months of the year. The second test deviation was in effect from December 13, 2004 through March 12, 2005. We received eight comment letters in response to our second test deviation. All eight letters were in favor of making the proposed rule change permanent.

The existing drawbridge operation regulations allow the bridge to remain closed to vessel traffic, Monday through Friday, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m., daily.

Under this final rule the Amtrak Portal Bridge will not open for vessel traffic, Monday through Friday, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m., daily. Additional bridge openings will be provided for commercial vessels from 6 a.m. to 7:20 a.m., from 9:20 a.m. to 10 a.m., from 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., if at least a one-hour advance notice is given by calling the number posted at the bridge.

Discussion of Comments and Changes

The Coast Guard received 30 comment letters in response to the notice of proposed rulemaking. All 30 comment letters were in favor of the rulemaking. As a result, no changes have been made to this final rule.

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).

This conclusion is based on the fact that the expansion of the existing bridge closed periods were previously tested during two 90-day temporary deviations with favorable results. We received no objections from the marine operators that normally use this waterway during the two deviation test periods or in response to our notice of proposed rulemaking.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 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 conclusion is based on the fact that the expansion of the existing bridge closed periods were previously tested during two 90-day temporary deviations with favorable results. We received no objections from the marine operators that normally use this waterway during the two deviation test periods or in response to our notice of proposed rulemaking.

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. No small entities requested Coast Guard assistance and none was given.

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 Enforcement Ombudsman and the Regional Small Business 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 1–888–REG–FAIR (1–888–734–3247).

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 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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; § 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.723 is amended by revising paragraph (c) to read as follows:

§ 117.723 Hackensack River.

* * * * *

(c) Except as provided in paragraphs (a)(1) of this section, the draw of the Amtrak Portal Bridge, mile 5.0, at Little Snake Hill, need not open for the passage of vessel traffic Monday through Friday, except Federal holidays, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m. Additional bridge openings shall be provided for commercial vessels from 6 a.m. to 7:20 a.m.; 9:20 a.m. to 10 a.m.; 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., if at least a one-hour advance notice is given by calling the number posted at the bridge. At all other times the draw shall open on signal.

* * * * *

Dated: September 25, 2005.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 05–19952 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–05–028]

Drawbridge Operation Regulations; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Tower Drawbridge across the Sacramento River, mile 59.0, at Sacramento, CA. This deviation allows the drawbridge to not open for vessel traffic and remain in the closed-to-navigation position. The deviation is necessary to rehabilitate the bridge deck.

DATES: This deviation is effective from 10 p.m. on October 16, 2005 through 7 a.m. on October 20, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION: California Department of Transportation (CalTrans) requested a temporary change to the operation of the Tower Drawbridge, mile 59.0, Sacramento River, Sacramento, CA. The Tower Drawbridge navigation span provides vertical clearance of 30 feet above Mean High Water in the closed-to-navigation position. Presently, the draw is required to open on signal as required by 33 CFR 117.189. CalTrans requested the drawbridge be allowed to remain closed to navigation from 10 p.m. on October 16, 2005 to 7 a.m. on October 20, 2005.

During this time, CalTrans will rehabilitate the bridge deck on the drawspan and avoid the risks associated with trying to maintain the delicate mechanical balance necessary for drawspan operation. Navigation on the waterway consists of both commercial and recreational watercraft. The drawspan can be operated for emergency purposes with 4 hours' advance notice. Vessels that can pass through the bridge in the closed-to-navigation position may continue to do so at any time. This deviation to drawbridge regulating operations has been coordinated with the waterway users. No objections to the proposed deviation were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 23, 2005.

Kevin J. Eldridge,

Rear Admiral, U. S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 05–19953 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–05–020]

RIN 1625–AA09

Drawbridge Operation Regulations: Dorchester Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operating regulations governing the operation of the William T. Morrisey Boulevard Bridge, at mile 0.0, across Dorchester Bay at Boston, Massachusetts. This change to the drawbridge operation regulations allows the bridge to remain in the closed position from November 1, 2005 through May 10, 2006. This action is necessary to facilitate scheduled bridge maintenance.

DATES: This rule is effective from November 1, 2005 through May 10, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–05–020) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 20, 2005, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations, Dorchester Bay, Massachusetts, in the **Federal Register** (70 FR 20489). We received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The William T. Morrisey Boulevard Bridge, at mile 0.0 across Dorchester Bay, has a vertical clearance of 12 feet at mean high water and 22 feet at mean low water. The existing regulations at 33 CFR 117.597 require the draw to open on signal from April 16 through October 14, except that the draw need not open for vessel traffic from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the draw shall open on signal if at least twenty-four hours notice is given.

The bridge owner, the Department of Conservation and Recreation (DCR), asked the Coast Guard to temporarily change the drawbridge operation regulations to allow the bridge to remain in the closed position from November 1, 2005 through May 10, 2006, to facilitate electrical rehabilitation construction at the bridge.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking. As a result of the above, no changes were made to this temporary final rule.

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).

This conclusion is based on the fact that the only known users of the waterway, the Dorchester Yacht Club, will not be affected by this rule while it is in effect.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 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 conclusion is based on the fact that the only known user of the waterway, the Dorchester Yacht Club, will not be affected by this rule while it is in effect.

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. No small entities requested Coast Guard assistance and none was given.

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 Enforcement Ombudsman and the Regional Small Business 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 1–888–REG–FAIR (1–888–734–3247).

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 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 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 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded 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, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.597 [Suspended]

■ 2. From November 1, 2005 through May 10,2006, § 117.597 is suspended.

■ 3. From November 1, 2005 through May 10, 2006, § 117.T602 is temporarily added to read as follows:

§ 117.T602 Dorchester Bay.

The draw of the William T. Morrisey Boulevard Bridge, mile 0.0, at Boston, need not open for the passage of vessel traffic from November 1, 2005 through May 10,2006.

Dated: September 25, 2005.

David P. Pekoske,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 05–19949 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 02–353; FCC 05–149]

Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission resolves five petitions for reconsideration of the *Report and Order* adopting service rules for Advanced Wireless Services (AWS) in the 1710–1755 and 2110–2155 MHz bands. In this Order, the Commission modifies the band plan and makes minor revisions to the service rules to provide additional opportunities for smaller and rural wireless carriers and to enhance flexibility for potential licensees. In all other respects, the Commission denies the petitions for reconsideration. The Commission takes this action to facilitate the provision of new services to the public, and to encourage the optimum use of these frequencies.

DATES: Effective November 4, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Peter Corea of the Broadband Division, Wireless Telecommunications Bureau, at 202–418–BITS (2487) (voice) or 202–418–1169 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in WT Docket No. 02–353, FCC 05–149, adopted on August 5, 2005, and released on August 15, 2005. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (tty).

Overview

1. On November 25, 2003, the Commission adopted licensing, technical, and competitive bidding rules to govern the use of the Advanced Wireless Services spectrum in the 1710–1755 and 2110–2155 MHz bands. This *Order on Reconsideration* resolves petitions for reconsideration of the service rules *Report and Order.* (Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order,* WT Docket No. 02–353, 69 FR 5711–01 (Feb. 6, 2004)). Specifically, this Order decides the following issues.

2. The AWS band plan for the 1710–1755 and 2110–2155 MHz bands is modified as follows. Twenty megahertz of spectrum at 1710–1720, paired with 2110–2120 will be licensed on a Rural Service Area/Metropolitan Statistical Area (RSA/MSA) basis. Thirty megahertz of spectrum in this band will be licensed on an Economic Area (EA) basis: 20 megahertz at 1720–1730 paired with 2120–2130, and 10 megahertz at 1730–1735 paired with 2130–2135. Forty megahertz of spectrum will be licensed on a Regional Economic Area Grouping (REAG) basis and these blocks

will be contiguous in a manner that is convenient for aggregation. The Commission breaks up the original 2x15 MHz REAG block into a 2x5 MHz E block located at 1740–1745 and 2140–2145 MHz and a new 20 megahertz F block located at 1745–1755 MHz paired with 2145–2155 MHz.

3. The Commission denies a petition filed by Council Tree Communications, Inc. that seeks a set-aside of spectrum in the 1710–1755 MHz and 2110–2155 MHz bands for entities that meet the small business size standards used to determine eligibility for bidding credits. In addition, the Commission rejects Council Tree's proposals to amend the designated entity rules in this proceeding, but it stated it would examine, in a separate action, Council Tree's proposal to restrict large incumbent wireless service providers from having any material investment, financial, or operating relationship with a designated entity, if they have licenses with material geographic overlap.

4. The Order grants a petition filed by Powerwave Technologies, Inc. and removes the restriction on transmitter output power levels on AWS licensees as was recently done for PCS licensees in the *Biennial Regulatory Review—Amendment of parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, FCC 05–144 (rel. Aug. 9, 2005).

5. American Petroleum Institute and United Telecom Council (API/UTC) filed a joint petition in ET Dockets 95–18 and 00–258, as well as WT Docket 02–353, seeking clarification and reconsideration of the Fixed Microwave Service relocation procedures adopted for the 2110–2150 MHz band. The Commission addressed API/UTC's petition in the *MSS Fifth Memorandum Opinion and Order,* granting the petition in part and denying the petition otherwise. (Amendment of part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 00–258, RM–9498, RM–10024, ET Docket No. 95–18, *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order,* 69 FR 62615–01 (Oct. 27, 2004)). Because the Commission had previously addressed the petition in a prior proceeding, the Commission denies the petition relative to this proceeding.

II. Procedural Matters

A. Paperwork Reduction Act Analysis

6. This Order does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1996 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Supplemental Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in WT Docket No. 02–353 (NPRM). The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. In addition, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Report and Order* in WT Docket No. 02–353. This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) for the *Order on Reconsideration* conforms to the RFA.

Need for, and Objectives of, the Amended Rules

8. The *Order on Reconsideration* responds to petitions for reconsideration of the *Report and Order* adopting service rules for Advanced Wireless Services in the 1710–1755 and 2110–2155 MHz bands (AWS–1). The need for and objectives of the rules adopted in this *Order on Reconsideration* are the same as those discussed in the FRFA for the *Report and Order.* In the *Report and Order,* the Commission adopted provisions for application, licensing, operating and technical rules, and for competitive bidding for AWS–1. As adopted, the rules provide flexibility to licensees to provide any fixed or mobile service that is consistent with the allocations for this spectrum and, in order to accommodate differing needs, the band plan includes both localized and regional geographic service areas and symmetrically paired spectrum blocks with pairings composed of different bandwidths. The market-oriented licensing framework for these bands will ensure that this spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of broadband services, ultimately leading to greater benefits to consumers.

9. On reconsideration, we take the following actions: (i) Modify the band plan to increase the amount of spectrum available to smaller and rural wireless carriers; (ii) break a 30 MHz block into smaller components that can be aggregated; (iii) offer an additional block licensed on an Economic Area (EA) basis to help enhance the mixture of large and small geographic area licenses available to applicants; and (iv) eliminate the transmitter output power limits for AWS base and fixed stations to make the rule consistent with the rule governing PCS stations. The Commission affirmed its decision in the AWS–1 service rules *Report and Order* not to set aside spectrum for designated entities in the 1710–1755 and 2110–2155 MHz bands and also affirmed its decision to provide two levels of bidding credits.

Summary of Significant Issues Raised by Public

10. We received no comments directly in response to the IRFA or FRFA in this proceeding. We did, however, consider the potential impact of our rules on smaller entities. For example, in the present *Order on Reconsideration,* we have adopted certain changes in the band plan requested by the Rural Cellular Association (RCA) and the Rural Telecommunications Group (RTG), in conjunction with other commenting parties, which increase the amount of spectrum and number of spectrum blocks licensed on a smaller geographic basis. These changes are expected to increase opportunities for local, largely rural carriers, to be able to afford adequate spectrum and to utilize a building block approach to suit their particular needs.

11. We also note that in the *Report and Order,* the Commission decided to encourage participation by smaller and rural entities by adopting smaller geographic licensing areas such as MSAs and RSAs, as well as smaller spectrum block sizes, rather than adopting set-asides or eligibility restrictions. The Commission reasoned that opening the bands to as wide a range of applicants as possible would encourage entrepreneurial efforts to develop new technologies and services, while helping ensure the spectrum is used efficiently.

12. In a petition for reconsideration, Council Tree urged the Commission to reconsider its decision not to adopt a set aside of spectrum for designated entities in the 1710–1755 and 2110–2155 MHz bands or, in the alternative, to adopt a third level of bidding credit. In a separate *ex parte* filing, Council Tree also made certain proposals relating to designated entity status and benefits, such as bidding credits. As noted above, while we affirm the Commission's decision in the AWS–1 service rules *Report and Order* and decline to amend the designated entity rules in this proceeding, we will examine, in a separate action, Council Tree's proposal to restrict large incumbent wireless service providers from having any material investment, financial, or operating relationship with a designated entity, if they have licenses with material geographic overlap.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA. Nationwide, there are approximately 22.4 million small businesses, total, according to the SBA data.

14. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. Last, the definition of ''small governmental jurisdiction'' is one with populations of fewer than 50,000. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were about 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

15. The rules amended in the *Order on Reconsideration* affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. As discussed in the *Report and Order,* we do not know precisely the type of service that a licensee in these bands might seek to provide. Nonetheless, we anticipate that the services that will be deployed in these bands may have capital requirements comparable to those in the broadband Personal Communications Service (PCS), and that the licensees in these bands will be presented with issues and costs similar to those presented to broadband PCS licensees. Further, at the time the broadband PCS service was established, it was similarly anticipated that it would facilitate the introduction of a new generation of service. Therefore, the *Report and Order* adopted the same small business size standards here that the Commission adopted for the broadband PCS service. In particular, the *Report and Order* defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The *Report and Order* also provided small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

16. We do not yet know how many applicants or licensees in these bands will be small entities. Thus, the Commission assumes, for purposes of this Supplemental FRFA, that all prospective licensees are small entities as that term is defined by the SBA or by our three special small business size standards for these bands. Although we do not know for certain which entities are likely to apply for these frequencies, we note that the 1710–1755 MHz and 2110–2155 MHz bands are comparable to those used for cellular service and personal communications service.

Wireless Telephony Including Cellular, Personal Communications Service (PCS) and SMR Telephony Carriers

17. The SBA has developed a small business size standard for wireless small businesses within the two separate categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. We can assess small business prevalence by using data provided annually to the Commission by Telecommunications Relay Service (TRS) carriers. The TRS data compilation, published in the Commission's *Trends in Telephone Service*, groups together cellular, personal communications services, and specialized mobile radio telephony carriers into a single category called ''Wireless Telephony.'' (FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, page 5–5 (May 2004).) As noted above, under the pertinent SBA small business size standard, a wireless business is small if it has 1,500 or fewer employees. According to *Trends in Telephone Service* data, 447 carriers have reported that they provide Wireless Telephony. Of that total, an estimated 245 are small providers, under the SBA size standard. Thus, we can estimate that the majority of such businesses are small. In addition, the TRS data include a larger reporting category, ''Wireless Service Providers,'' that includes the above entities plus paging, data, and other mobile providers. According to the Trends in Telephone Service data, 975 carriers have reported that they are Wireless Service Providers. Of that total, an estimated 767 are small providers, under the SBA size standard. Thus, we can again estimate that the majority of such businesses are small. Consequently, the Commission estimates that most wireless service providers, as defined herein, are small.

Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

18. Applicants for AWS licenses in the 1710–1755 MHz and the 2110–2155 MHz bands will be required to submit short-form auction applications using FCC Form 175. In addition, winning bidders must submit long-form license applications through the Universal Licensing System using Form 601, FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms. These requirements were established in the *Report and Order* and are not modified by the *Order on Reconsideration*.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its adopted approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting

requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule, or any part thereof, for small entities.

20. We have taken significant steps to reduce burdens on small entities wherever possible, and considered various alternatives in this regard. To provide opportunities for small entities to participate in any auction that is held, we provide bidding credits for small businesses and very small businesses. The bidding credits adopted are 15 percent for small businesses and 25 percent for very small businesses. Although petitioner Council Tree requested set asides for designated entities in the 1710–1755 MHz and 2110–2155 MHz bands, we have found that the use of tiered or graduated small business size standards and bidding credits is useful in furthering our mandate under section 309(j) of the Communications Act to promote opportunities for, and disseminate licenses to, a wide variety of applicants. As discussed above in the Summary of Significant Issues Raised by Public, we decline to supplement the incentives for small business participation that the Commission has already adopted by foreclosing any of the licenses to other bidders.

21. Regarding our decisions to modify slightly the licensing approach to provide additional spectrum licensed on an RSA/MSA basis and to add an additional block offered on an EA basis, we anticipate that on balance small entities will benefit from this licensing approach. Geographic licensing in these bands supports the Commission's overall spectrum management goals in that it allows licensees to quickly respond to market demand. Small entities that acquire spectrum that is licensed on a geographic area basis will benefit from such flexibility. Moreover, we have attempted to strike a balance by using varying sizes of geographic areas. For example, small entities may be more interested in spectrum licensed using smaller geographic areas rather than in spectrum licensed on a nationwide or large regional basis. Consequently, we have decided to include licensing areas based on MSAs and RSAs, which permit entities who are only interested in serving rural areas to acquire spectrum licenses for these areas alone, and avoid acquiring spectrum licenses with high population densities that make purchase of license rights too expensive for these types of entities. MSAs and RSAs allow entities to mix and match rural and urban areas according to their business plans. These types of smaller geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies. Their inclusion in our band plan will foster service to rural areas and tribal lands and thereby bring the benefits of advanced services to these areas. Smaller service providers could acquire an RSA and create a new service area or they could expand an existing service territory or supplement the spectrum they are licensed to operate in by adding an RSA. They could also combine a few MSAs and RSAs to create a larger but localized service territory. An alternative to our decision to use geographic areas for licensing would have been to employ a site-by-site licensing approach. Site-by-site licensing, however, would be an inefficient licensing method due to a greater strain on Commission resources and less flexibility afforded to licensees.

22. We have also made adjustments to the band plan to license the spectrum in different bandwidths. We do not believe this will disadvantage small entities. In fact, we have decided that the RSA/MSA license areas will be licensed as paired spectrum at 1710–1720 and 2110–2120 for a total of 734 licenses, and we have decided that the B and C blocks will be licensed as paired 10- and 5-MHz blocks, respectively, on an EA basis. These block sizes should provide flexibility to licensees in constructing their systems. Our approach provides maximum flexibility for both small and large entities to offer a wide range of communications services.

Report to Congress

23. The Commission will send a copy of the *Order on Reconsideration*, including this Supplemental FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order on Reconsideration*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

C. Authority

24. This action is taken pursuant to sections 1, 2, 4(i), 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i), 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, and 333.

25. Accordingly, it is ordered that the Petition for Reconsideration filed by Rural Communications Association is granted to the extent indicated herein, and is otherwise denied.

26. It is further ordered that the Petition for Reconsideration filed by T-Mobile, USA, Inc. is granted to the extent indicated herein, and is otherwise denied.

27. It is further ordered that the Petition for Reconsideration filed by Council Tree Communications, Inc. is denied.

28. It is further ordered that the Petition for Reconsideration filed by Powerwave Technologies, Inc. is granted to the extent indicated herein.

29. It is further ordered that part 27 of the Commission's Rules is amended as set forth in the final rule changes.

30. It is further ordered that the Petition for Reconsideration filed by American Petroleum Institute and United Telecom Council is denied to the extent indicated herein.

31. It is further ordered that the rule amendments made by this Order and specified in the final rule changes shall become effective November 4, 2005.

32. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 2. Section 27.5 is amended by revising paragraph (h) to read as follows:

§ 27.5 Frequencies.

* * * * *

(h) *1710–1755 MHz and 2110–2155 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 1710–1755 MHz and 2110–2155 MHz bands:

(1) Three paired channel blocks of 10 megahertz each are available for assignment as follows:

Block A: 1710–1720 MHz and 2110–2120 MHz;

Block B: 1720–1730 MHz and 2120–2130 MHz; and

Block F: 1745–1755 MHz and 2145–2155 MHz.

(2) Three paired channel blocks of 5 megahertz each are available for assignment as follows:

Block C: 1730–1735 MHz and 2130–2135 MHz;

Block D: 1735–1740 MHz and 2135–2140 MHz; and

Block E: 1740–1745 MHz and 2140–2145 MHz.

* * * * *

■ 3. Section 27.6 is amended by revising paragraph (h) to read as follows:

§ 27.6 Service areas.

* * * * *

(h) 1710–1755 and 2110–2155 MHz bands. AWS service areas for the 1710–1755 MHz and 2110–2155 MHz bands are as follows:

(1) Service areas for Block A (1710–1720 MHz and 2110–2120 MHz) are based on cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by Public Notice Report No. CL–92–40 ''Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties,'' dated January 24, 1992, DA 92–109, 7 FCC Rcd 742 (1992), with the following modifications:

(i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline.

(ii) The service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

(2) Service areas for Blocks B (1720–1730 MHz and 2120–2130 MHz) and C (1730–1735 MHz and 2130–2135 MHz) are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

(3) Service areas for blocks D (1735–1740 MHz and 2135–2140 MHz), E (1740–1745 MHz and 2140–2145 MHz) and F (1745–1755 MHz and 2145–2155 MHz) are based on Regional Economic Area Groupings (REAGs) as defined by paragraph (a) of this section.

■ 4. Section 27.11 is amended by revising section (i) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(i) *1710–1755 MHz and 2110–2155 MHz bands.* Initial authorizations for the 1710–1755 MHz and 2110–2155 MHz bands shall be for 5 or 10 megahertz of spectrum in each band in accordance with § 27.5(h) of this part.

(1) Authorizations for Block A, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(1).

(2) Authorizations for Block B, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(2).

(4) Authorizations for Blocks D, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(3).

(5) Authorizations for Blocks E, consisting of two paired channels of 5 megahertz each, will be based on those geographic areas specified in § 27.6(h)(3).

(6) Authorizations for Block F, consisting of two paired channels of 10 megahertz each, will be based on those geographic areas specified in § 27.6(h)(3).

■ 5. Section 27.50 is amended by revising paragraphs (d) introductory text and (d)(1) to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(d) The following power and antenna height requirements apply to stations transmitting in the 1710–1755 MHz and 2110–2155 MHz bands:

(1) The power of each fixed or base station transmitting in the 2110–2155 MHz band and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to a peak equivalent isotropically radiated power (EIRP) of 3280 watts. The power of each fixed or base station transmitting in the 2110–2155 MHz band from any other location is limited to a peak EIRP of 1640 watts. A licensee operating a base or fixed station utilizing a power of more than 1640 watts EIRP must coordinate such operations in advance with all Government and non-Government satellite entities in the 2025–2110 MHz band. Operations above 1640 watts EIRP must also be coordinated in advance with the following licensees within 120 kilometers (75 miles) of the base or fixed station: all Broadband Radio Service (BRS) licensees authorized under part 27 in the 2155–2160 MHz band and all AWS licensees in the 2110–2155 MHz band.

* * * * *

[FR Doc. 05–19761 Filed 10–4–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 387

[Docket No. FMCSA–2005–22470]

Regulatory Guidance for Forms Used To Establish Minimum Levels of Financial Responsibility of Motor Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Regulatory guidance.

SUMMARY: This document presents interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA issues new regulatory guidance for Forms MCS–90, MCS–90B, MCS–82, and MCS–82B used to establish minimum levels of financial responsibility of motor carriers. The questions and answers are applicable to motor carrier operations on a national basis. This guidance will provide the motor carrier and financial services industries and Federal, State, and local law enforcement officials with a clearer understanding of the applicability in particular situations of Forms MCS–90, MCS–90B, MCS–82, and MCS–82B contained in the FMCSRs.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Joy Dunlap, Chief, Commercial Enforcement Division, Office of Enforcement and Compliance (MC–ECC), Federal Motor Carrier Safety Administration, 400 Seventh Street. SW., Washington, DC 20590. Phone 202–385–2400. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION:

Basis for the Notice

FMCSA received a petition for rulemaking from several insurance companies and the American Insurance Association to amend Form MCS–90, Endorsement for Motor Carrier Policies

of Insurance for Public Liability, to incorporate several changes, most of which were suggested to clarify the meaning of Form MCS–90. The Trucking Industry Defense Association (TIDA) filed a brief in support of the petition. A copy of the petition, amendments to the petition and the TIDA brief are in the docket identified in the heading of this document. The petitioners contended changes were necessary in light of Federal and State court decisions [1] that they claimed misconstrued Form MCS–90 to require insurance companies to pay damages for negligent operation of a vehicle owned by the insured motor carrier but not covered by its insurance policy, even when no judgment had been obtained against the insured motor carrier. The Petitioners' primary concern was to have the agency clarify that the word ''insured'' in the Form MCS–90 means ''named insured.''

FMCSA has denied the petition for rulemaking. However, the agency stated petitioners' concerns could be adequately addressed without rulemaking through formal agency guidance to be published in the **Federal Register.** A copy of the letter denying the petition is in the docket identified in the heading of this document.

FMCSA Authorities Over Motor Carrier Financial Responsibility Requirements

Section 30 of the Motor Carrier Act of 1980 (Pub. L. 96–296, July 1, 1980, 94 Stat. 793, at 820), codified at 49 U.S.C. 31139, established minimum levels of financial responsibility for for-hire motor carriers of property involved in interstate or foreign transportation and for the transportation of hazardous materials in intrastate and interstate commerce.

Section 18 of the Bus Regulatory Reform Act of 1982 (Pub. L. 97–261, September 20, 1982, 96 Stat. 1102), codified at 49 U.S.C. 31138, established minimum levels of financial responsibility covering public liability and property damage for the transportation of passengers by for-hire motor carriers in interstate or foreign commerce.

The financial responsibility provisions of the Motor Carrier Act of 1980 and the Bus Regulatory Reform Act of 1982 were intended to create incentives for the motor carrier industry to focus on the safety aspects of highway transportation and to assure the general public that a motor carrier maintains an adequate level of financial responsibility sufficient to satisfy claims covering public liability, property damage liability and, in the case of transporters of hazardous materials, environmental restoration liability.

The Administrator of FMCSA has been delegated authority, under 49 CFR 1.73(f), to carry out the functions vested in the Secretary of Transportation relating to financial responsibility requirements for motor carriers, brokers and freight forwarders. Such functions include issuing regulations implementing 49 U.S.C. 31138 and 31139 and providing guidance regarding statutory or regulatory requirements.

This document provides regulatory guidance to the petitioners and the public with respect to the proper interpretation of Form MCS–90. FMCSA is including Forms MCS–90B, MCS–82, and MCS–82B in this regulatory guidance as well, because the same issue may arise with respect to these forms. Forms MCS–90, MCS–90B, MCS–82, and MCS–82B are not intended, and do not purport, to require insurance companies or sureties to satisfy a judgment against any party other than the motor carrier named in the endorsement or its fiduciary.

Members of the motor carrier industry and other interested parties may also access the guidance in this document through the FMCSA's Internet site at *http://www.fmcsa.dot.gov.*

Specific questions addressing any of the interpretive material published in this document should be directed to the contact person listed earlier under **FOR FURTHER INFORMATION CONTACT,** or the FMCSA Division Office in each State.

Regulatory Guidance

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Sections Interpreted

Section 387.15 Forms

Question: Does the term ''insured,'' as used on Form MCS–90, Endorsement for Motor Carrier Policies of Insurance for Public Liability, or ''Principal'', as used on Form MCS–82, Motor Carrier Liability Surety Bond, mean the motor carrier named in the endorsement or surety bond?

Guidance: Yes. Under 49 CFR 387.5, ''insured and principal'' is defined as ''the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.'' Form MCS–90 and Form MCS–82 are not intended, and do not purport, to require a motor carrier's insurer or surety to satisfy a judgment against any party other than the carrier named in the endorsement or surety bond or its fiduciary.

Section 387.39 Forms

Question: Does the term ''insured,'' as used on Form MCS–90B, Endorsement for Motor Carrier Policies of Insurance for Public Liability, or ''Principal'', as used on Form MCS–82B, Motor Carrier Public Liability Surety Bond, mean the motor carrier named in the endorsement or surety bond?

Guidance: Yes. Under 49 CFR 387.29, ''insured and principal'' is defined as ''the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.'' Form MCS–90B and Form MCS–82B are not intended, and do not purport, to require a motor carrier's insurer or surety to satisfy a judgment against any party other than the carrier named in the endorsement or surety bond or its fiduciary.

Issued on: September 28, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–19946 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–EX–P

[1] *John Deere Insurance Co.* v. *Nueva,* 229 F.3d 853 (9th Cir. 2000); *Lynch* v. *Yob,* 95 Ohio St. 3d 441, 768 NE. 2d 1158 (2002); *Pierre* v. *Providence Wash. Ins. Co.,* 286 A.D.2d 139, 730 N.Y.S.2d 550 (2001); and *Madere* v. *National Union Fire Ins. Co. of Pittsburgh,* 2000 U.S. Dist. LEXIS 15994 (E.D. La. 2000).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040830250–5062–03; I.D. 093005A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments to management measures; request for comments.

SUMMARY: NMFS announces changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), will allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) October 1, 2005. Comments on this rule will be accepted through November 4, 2005.

ADDRESSES: You may submit comments, identified by 093005A by any of the following methods:

- E-mail: *GroundfishInseason4.nwr@noaa.gov*. Include I.D. number 093005A in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: 206–526–4646, Attn: Jamie Goen.
- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn: Jamie Goen, 7600 Sand Point Way NE., Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's Web site at: *http://www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the NMFS Northwest Region Web site at: *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's Web site at: *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for 2005–2006 were codified in the CFR (50 CFR part 660, subpart G). They were published in the **Federal Register** as a proposed rule on September 21, 2004 (69 FR 56550), and as a final rule on December 23, 2004 (69 FR 77012). The final rule was subsequently amended on March 18, 2005 (70 FR 13118); March 30, 2005 (70 FR 16145); April 19, 2005 (70 FR 20304); May 3, 2005 (70 FR 22808); May 4, 2005 (70 FR 23040); May 5, 2005 (70 FR 23804); May 16, 2005 (70 FR 25789); May 19, 2005 (70 FR 28852); July 5, 2005 (70 FR 38596); and August 31, 2005 (70 FR 51682).

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its September 19–23, 2005, meeting in Portland, OR. The changes recommended by the Pacific Council include: (1) Changes to the trawl Rockfish Conservation Areas (RCAs) for limited entry trawl fisheries, (2) changes to the limited entry trawl trip limits for ''other flatfish,'' petrale sole, English sole, arrowtooth flounder, minor slope rockfish, darkblotched rockfish, splitnose rockfish, and to the limits for Dover sole, longspine thornyhead, shortspine thornyhead and sablefish (DTS), (3) an increase to the bycatch limit for widow rockfish in the whiting fishery, (4) changes to the limited entry fixed gear and open access daily trip limits for sablefish, (5) changes to Washington's recreational groundfish fishery RCA, and (6) changes to Oregon's recreational groundfish fishery bag limits. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to other trip limits or management measures will be made as necessary to allow achievement of, or to avoid exceeding, optimum yields (OYs).

Limited Entry Trawl RCA Changes

A review of Pacific Fisheries Information Network (PacFIN) Quota Species Monitoring (QSM) data shows that the catch of petrale sole is quickly approaching its optimum yield (OY), which is set equal to the acceptable biological catch (ABC) in 2005. As of September 16, 2005, QSM data indicate that the total non-tribal petrale sole catch is 2,552 mt out of a combined tribal/non-tribal ABC/OY of 2,762 mt. Because petrale sole is already approaching its ABC/OY in September, a winter petrale sole fishery in November and December (Period 6) cannot be accommodated. Additionally, the catch of canary rockfish in the limited entry bottom trawl fishery has exceeded the 8.0 mt of canary rockfish projected for the year for this fishery in the bycatch scorecard by 1.5 mt.

NMFS has been monitoring the limited entry trawl fishery throughout the year, and sent out a public notice on July 27, 2005 (NMFS–SEA–05–05) to notify the public that petrale sole and canary rockfish take in the limited entry bottom trawl fleet was higher than had been expected. NMFS also alerted the public that the agency might have to take action to slow the catch of these species to keep total catch within their ABC and/or harvest guidelines and requested that the harvesting and processing communities take voluntary action to slow their catch rates. While the harvesting and processing communities have slowed catch somewhat, voluntary action alone is not enough, in this case, to keep total catch of petrale sole and canary rockfish within harvest limits for 2005.

In order to further reduce the take of canary rockfish and petrale sole in the trawl fishery, the Pacific Council recommended modifying the trawl RCA and reducing trip limits for DTS and flatfish species (see following section on Limited Entry Trawl Trip Limit Adjustments). For the trawl RCA, the Pacific Council recommended increasing the size of the area closed to fishing with trawl gear by modifying the seaward boundary of the trawl RCA to be at a boundary line approximating the 250-fm (457-m) depth contour coastwide. In order to further reduce the take of petrale sole in the trawl fishery, the Pacific Council recommended modifying the shoreward boundary of the trawl RCAs to be at the shoreline north of 36° N. lat. and be at a boundary line approximating the 50-fm (91-m) depth contour south of 36° N. lat. This allows for more opportunities in areas south of 36° N. lat., where canary rockfish and petrale sole encounters are minimal, than in the north.

However, implementation of a boundary line approximating the 250-fm (457-m) depth contour south of 38° N. lat. to the U.S./Mexico border is not possible through an inseason action because coordinates do not exist in Federal regulations for that line. In keeping with the Pacific Council's intent to increase the size of the trawl RCA to protect petrale sole and canary rockfish in general, and, in this case, to move the seaward boundary of the trawl RCA to protect petrale sole, the next closest RCA boundary line for this area with coordinates published in Federal regulations is a boundary line approximating the 200-fm (366-m) depth contour. Because there is catch of petrale between 200-fm (366-m) and 250-fm (457-m) in this area, NMFS expects that this change alone will not keep total catch of petrale sole within the ABC/OY for petrale, thus NMFS is also prohibiting the retention of petrale sole in this area during October as explained below in the following section titled '' Limited Entry Trawl Trip Limit Adjustments.'' This combination of measures gets the management scheme as close as possible to what was recommended by the Pacific Council.

While the open access non-groundfish fisheries have historically been subject to the same trawl RCA boundaries as limited entry trawl fisheries, the open access non-groundfish trawl fisheries only encounter minimal amounts of petrale sole and Dover sole. For example, 2004 fishticket data from the California halibut fishery shows a total of 150 lb (68 kg) of petrale sole landed between October and December in the area between 40°30′ N. lat. and 36° N. lat. In addition, the catch of canary rockfish in the open access non-groundfish trawl fisheries has already been accounted for in the bycatch scorecard separately from the limited entry trawl fishery, and are projected to take 0.1 mt for the year. Therefore, the non-groundfish trawl RCA for the open access non-groundfish trawl fisheries has not been adjusted to reflect changes in what has generally been called the ''trawl RCA.''

Therefore, the Pacific Council recommended and NMFS is implementing the following inseason changes to be effective October through December:

1. Between the U.S./Canada border and 36° N. lat., move the shoreward boundary of the limited entry trawl RCA from a boundary line approximating 100-fm (183-m) to the shoreline in October, and from a boundary line approximating 75-fm (137-m) to the shoreline in November and December;

2. Between 36° N. lat. and the U.S./Mexico border, move the shoreward boundary of the limited entry trawl RCA from a boundary line approximating 100-fm (183-m) to a boundary line approximating 50-fm (91-m) in October, and from a boundary line approximating 75-fm (137-m) to a boundary line approximating 50-fm (91-m) in November and December;

3. Between the U.S./Canada border and 40°10′ N. lat., move the seaward boundary of the limited entry trawl RCA from a boundary line approximating 200-fm (366-m) to a boundary line approximating 250-fm (457-m) in October, and from a boundary line approximating 200-fm (366-m), as modified to accommodate petrale fishing, to a boundary line approximating 250-fm (457-m)(not modified to accommodate petrale fishing) in November and December; and

4. Between 40°10′ N. lat. and 38° N. lat., move the seaward boundary of the limited entry trawl RCA from a boundary line approximating 150-fm (274-m) to a boundary line approximating 250-fm (457-m) in October through December.

In addition, as explained above, NMFS is implementing something different than what the Pacific Council recommended for the seaward boundary of the limited entry trawl RCA south of 38° N. lat. NMFS is implementing the following inseason changes to be effective October through December, 2005:

5. Between 38° N. lat. and the U.S./Mexico border, move the seaward boundary of the limited entry trawl RCA from a boundary line approximating 150-fm (274-m) to a boundary line approximating 200-fm (366-m) in October through December; and

6. Between 34°27′ N. lat. and the U.S./Mexico border, move the seaward boundary of the limited entry trawl RCA around islands from a boundary line approximating 150-fm (274-m) to a boundary line approximating 200-fm (366-m) in October through December.

Limited Entry Trip Limit Adjustments

(**Note:** The analysis and projections in the discussion below were based on recommendations given at the Pacific Council meeting when the seaward boundary of the limited entry trawl RCA south of 38° N. lat. was assumed to be at 250-fm.)

The limited entry trawl trip limits for DTS, ''other flatfish,'' petrale sole, English sole, arrowtooth flounder, minor slope rockfish, darkblotched rockfish and splitnose rockfish are adjusted based on observer data, logbook data, current fish ticket landings data from PacFIN and on analysis using the trawl model.

As mentioned previously under the ''Limited Entry Trawl RCA Changes,'' fishticket landings data from PacFIN through mid-September in 2005 were reviewed at the Pacific Council meeting. Compared to trawl model projections for 2005, landings for petrale sole and Dover sole were higher than what had been projected in the trawl model. Higher landings of petrale sole and Dover sole are of particular concern, because access to flatfish stocks is substantially more liberal than in recent years, and these species were initially modeled to achieve their respective OYs. While flatfish trip limits were initially reduced through the May 4, 2005 inseason action (70 FR 23040), further reductions are necessary to slow the catch of flatfish species through the end of the year.

Trip limits for petrale sole will be substantially reduced in November and December (Period 6), with the intent to discourage targeting but allow incidental catch in the DTS fishery to minimize discard. This reduction combined with the limited entry trawl RCA changes recommended at the Pacific Council meeting, is projected to keep petrale sole catch within its ABC/OY for the year (2,748 mt predicted to be caught out of an ABC/OY of 2,762 mt).

Trip limits for DTS are also adjusted to slow the catch of Dover sole while still allowing some targeting. While trip limits for sablefish and thornyheads were increased for some trawl gear types in some areas through the July 5, 2005 inseason changes (70 FR 38596), trip limits for DTS in all areas are generally being reduced in November and December. Because there is no area open to trawl fishing shoreward of the trawl RCA north of 40°10′ N. lat., all gear types will have the same trip limits seaward of the trawl RCA in November and December. Therefore, Dover sole trip limits in November and December (period 6) are being increased from previously scheduled limits for fishers using selective flatfish trawl gear and decreased from previously scheduled limits for fishers using small or large footrope trawl gear, so the trip limits for all gear types will be the same.

In addition, the Dover sole trip limit north of 40°10′ N. lat. will be increased slightly for the September and October cumulative limit period (period 5). Because the trawl RCA in this area will extend between the shoreline and a boundary line approximating the 250-fm (457-m) depth contour beginning in October (the middle of a cumulative limit period), the Dover sole trip limit is increased to make the trip limits for all trawl gear, including selective flatfish trawl gear, match. Previously, fishers who used selective flatfish trawl gear to catch Dover sole shoreward of the RCA had a higher trip limit (35,000 lb (15.9 mt) as opposed to 30,000 lb (13.6 mt) seaward of the trawl RCA). This differential trip limit was intended to encourage fishers to use selective flatfish trawl gear which has been shown to have lower incidental catch of overfished groundfish species. Thus, by increasing the Dover sole trip limit for all trawl gears to match the highest trip limit allowed during Period 5, fishers who have previously used selective flatfish trawl gear shoreward of the RCA will not be restricted to that lower limit when fishing seaward of the trawl RCA for the remainder of Period 5.

Trip limits for the ''other flatfish'' complex, English sole and arrowtooth flounder will also be reduced in Period 6 to reduce the take of Dover sole, a co-occurring flatfish species.

All of these changes, the reduction in DTS trip limits during Period 6, the increase in the Dover sole trip limit north of 40°10′ N. lat. during Period 5, and the reduction in flatfish trip limits,

are projected to keep catch of DTS species within their OYs for the year (Dover sole: projected limited entry trawl take is 7,431 mt out of an OY of 7,476 mt; longspine thornyhead: 696 mt out of an OY of 2,646 mt; shortspine thornyhead: 723 mt out of an OY of 999 mt; and sablefish: 2,429 mt out of an OY of 7,761 mt).

Trip limits for minor slope rockfish/darkblotched rockfish and splitnose rockfish between 40°10′ N. lat. and 38° N. lat. will also be reduced in Period 6 to reduce the take of Dover sole and petrale sole, species which co-occur with these slope rockfish. In addition, with the seaward boundary of the trawl RCA moving out to a boundary line approximating the 250-fm (457-m) depth contour, the likelihood of catching these species decreases.

As previously discussed in the section on ''Limited Entry Trawl RCA Changes,'' the Pacific Council recommended that NMFS implement a seaward limited entry trawl RCA boundary line approximating the 250-fm (457-m) depth contour coastwide in order to nearly eliminate the catch of petrale sole. However, NMFS is not able to implement this line south of 38° N. lat. to the U.S./Mexico border because there are no coordinates for this line in Federal regulations. Therefore, in order to implement the intent of the Pacific Council recommendation as much as possible, NMFS is implementing a boundary line approximating the 200-fm (366-m) depth contour and a prohibition on the retention of petrale sole in this area. Because there is catch of petrale between 200-fm (366-m) and 250-fm (457-m), including some targeting on petrale sole, moving the RCA boundary line from 150-fm (274-m) to 200-fm (366-m) for October through December will likely not keep total catch of petrale sole within its ABC/OY for the year. A reduction of the petrale sole trip limit during the middle of a cumulative trip limit period (in this case, September through October) is not possible for enforcement reasons. Therefore, in addition to the line change, NMFS is also implementing a prohibition on the retention of petrale sole between 38° N. lat. and the U.S./Mexico border during the month of October in order to prevent targeting on petrale sole. During November and December, the Pacific Council recommendation of decreasing the trip limit for petrale sole to 2,000 lb (0.9 mt) per 2 months is sufficient to allow retention of incidentally caught petrale sole while not encouraging targeting.

Therefore, the Pacific Council recommended and NMFS is implementing the following inseason adjustments:

1. North of 40°10′ N. lat., with large and small footrope trawl gear, increase Dover sole trip limits from 30,000 lb (13.6 mt) per 2 months to 35,000 lb (15.9 mt) per 2 months in Period 5 (September through October);

2. North of 40°10′ N. lat., with large and small footrope trawl gear, decrease Dover sole trip limits from 22,000 lb (10.0 mt) per 2 months to 20,000 lb (9.1 mt) per 2 months, decrease shortspine thornyhead trip limits from 3,700 lb (1.7 mt) per 2 months to 3,500 lb (1.6 mt) per 2 months, decrease longspine thornyhead trip limits from 15,000 lb (6.8 mt) per 2 months to 7,000 lb (3.2 mt) per 2 months, and decrease sablefish trip limits from 13,000 lb (5.9 mt) per 2 months to 11,000 lb (5.0 mt) per 2 months in Period 6 (November through December);

3. North of 40°10′ N. lat., with selective flatfish trawl gear, increase Dover sole trip limits from 8,000 lb (3.6 mt) per 2 months to 20,000 lb (9.1 mt) per 2 months, increase shortspine thornyhead trip limits from 2,000 lb (0.9 mt) per 2 months to 3,500 lb (1.6 mt) per 2 months, increase longspine thornyhead trip limits from 2,000 lb (0.9 mt) per 2 months to 7,000 lb (3.2 mt) per 2 months, and increase sablefish trip limits from 10,000 lb (4.5 mt) per 2 months to 11,000 lb (5.0 mt) per 2 months in Period 6;

4. North of 40°10′ N. lat., with large and small footrope trawl gear, decrease ''other flatfish,'' English sole and petrale sole trip limits from ''80,000 lb (36.3 mt) per 2 months, no more than 60,000 lb (27.2 mt) per 2 months of which may be petrale sole'' to ''30,000 lb (13.6 mt) per 2 months, no more than 2,000 lb (0.9 mt) per 2 months of which may be petrale sole'' in Period 6;

5. North of 40°10′ N. lat., with selective flatfish trawl gear, decrease ''other flatfish,'' English sole and petrale sole trip limits from ''75,000 lb (34.0 mt) per 2 months, no more than 15,000 lb (6.8 mt) per 2 months of which may be petrale sole'' to ''30,000 lb (13.6 mt) per 2 months, no more than 2,000 lb (0.9 mt) per 2 months of which may be petrale sole'' in Period 6;

6. North of 40°10′ N. lat., with large and small footrope trawl gear, decrease arrowtooth flounder trip limits from 80,000 lb (36.3 mt) per 2 months to 50,000 lb (22.7 mt) per 2 months in Period 6;

7. North of 40°10′ N. lat., with selective flatfish trawl gear, decrease arrowtooth flounder trip limits from 70,000 lb (31.8 mt) per 2 months to 50,000 lb (22.7 mt) per 2 months in Period 6;

8. South of 40°10′ N. lat., decrease Dover sole trawl trip limits from 35,000 lb (15.9 mt) per 2 months to 30,000 lb (13.6 mt) per 2 months, decrease shortspine thornyhead trip limits from 4,600 lb (2.1 mt) per 2 months to 3,500 lb (1.6 mt) per 2 months, decrease longspine thornyhead trip limits from 19,000 lb (8.6 mt) per 2 months to 11,000 lb (5.0 mt) per 2 months, and decrease sablefish trip limits from 16,000 lb (7.3 mt) per 2 months to 9,000 lb (4.1 mt) per 2 months in Period 6 (November through December);

9. Between 40°10′ N. lat. and 38° N. lat., decrease ''other flatfish,'' and English sole trawl trip limits from 110,000 lb (49.9 mt) per 2 months to 30,000 lb (13.6 mt) per 2 months in Period 6;

10. South of 38° N. lat., decrease ''other flatfish,'' and English sole trawl trip limits from 110,000 lb (49.9 mt) per 2 months to 40,000 lb (18.1 mt) per 2 months in Period 6;

11. South of 40°10′ N. lat., decrease petrale sole trawl trip limits from 100,000 lb (45.4 mt) per 2 months to 2,000 lb (0.9 mt) per 2 months in Period 6;

12. Between 40°10′ N. lat. and 38° N. lat., decrease arrowtooth flounder trawl trip limits from 20,000 lb (9.1 mt) per 2 months to 10,000 lb (4.5 mt) per 2 months in Period 6;

13. South of 38° N. lat., decrease arrowtooth flounder trawl trip limits from 20,000 lb (9.1 mt) per 2 months to 5,000 lb (2.3 mt) per 2 months in Period 6; and

14. Between 40°10′ N. lat. and 38° N. lat., decrease both the minor slope rockfish/darkblotched rockfish and the splitnose rockfish trawl trip limits from 8,000 lb (3.6 mt) per 2 months to 6,000 lb (2.7 mt) per 2 months in Period 6.

In addition, NMFS is implementing the following inseason adjustment:

(15) Between 38° N. lat. to the U.S./Mexico border, decrease petrale sole trawl trip limits from 42,000 lb per 2 months during September and October to closed (*i.e.*, retention is prohibited) during the month of October.

Bycatch Limits for Widow Rockfish in the Pacific Whiting Fishery

Widow rockfish, an overfished groundfish species, co-occurs with Pacific whiting and is, therefore, commonly caught in Pacific whiting fisheries. Beginning in 2005, NMFS implemented a bycatch limit for certain overfished species that co-occur with whiting fisheries, particularly canary and widow rockfish which are constraining to the whiting fishery in 2005 and 2006. Implementing bycatch limits allowed NMFS to set a higher OY

for Pacific whiting in 2005 and 2006 than would otherwise have been possible. Because catch in the Pacific whiting fishery can be tracked by NMFS with near real-time data, NMFS has the ability to manage the Pacific whiting fishery to stay within bycatch limits.

Based on PacFIN QSM data for the shore-based sector as of the September 12, 2005, and on real-time observer data for the at-sea sector, the non-tribal Pacific whiting sector had taken 149.6 mt of the 200 mt widow rockfish bycatch limit. In order to deter a derby fishery that would harvest as much whiting as possible before the widow rockfish bycatch limit is reached, the Pacific Council considered whether some of the widow rockfish not yet set aside or projected to be taken by other sectors in the bycatch scorecard (a management tool used by the Pacific Council's Groundfish Management Team (GMT)) could be moved into the whiting fishery's projected take for 2005, and hence bycatch limits as stated in regulation at 50 CFR 660.373(b)(4). Of the 26.8 mt of widow rockfish estimated to be available, the Pacific Council moved 12 mt of that into the widow rockfish bycatch limit for the Pacific whiting fishery.

Therefore, the Pacific Council recommended and NMFS is implementing an increase in the 2005 bycatch limit for Pacific whiting, as stated at 50 CFR 660.373(b)(4), from 200 mt of widow rockfish to 212 mt.

While NMFS has recently been concerned about the bycatch of Chinook salmon in the Pacific whiting fisheries, this action is not expected to increase salmon bycatch. A temporary rule, effective August 26, 2005, through February 27, 2006 (August 31, 2005, 70 FR 51682), created a closed area, called the Ocean Salmon Conservation Zone, which is closed to fishing for Pacific whiting shoreward of a boundary line approximating the 100-fm (183-m) depth contour to protect Chinook salmon. Limited Entry Fixed Gear and Open Access ''daily Trip Limit (DTL) Fishery for Sablefish North of 36° N. Lat.

Based on PacFIN QSM data through September 12, 2005, the sablefish DTL sectors, both limited entry fixed gear and open access, have attained less than half of their allocation for the year. As a result, the Pacific Council's GMT analyzed an increase to the DTL fishery's daily, weekly, and bimonthly limits for the fishery north of 36° N. lat. As part of their analysis, the GMT considered likely increases in effort and limit attainment from vessels engaged in the DTL fishery. This inseason adjustment is not expected to result in increased levels of bycatch beyond what is already accounted for in the bycatch scorecard, since those estimates were based on the assumption that each sector would achieve its allocation.

Therefore, the Pacific Council recommended and NMFS is implementing an increase in the limited entry fixed gear and open access daily trip limit fishery for sablefish north of 36° N. lat. to the U.S./Canada border from 300 lb (136 kg)/day, or 1 landing per week of up to 900 lb (408 kg), not to exceed 3,600 lb/ (1,633 kg) 2 months to 500 lb (227 kg)/day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 9,000 lb (4,082)/2 months for October through December.

Washington's Recreational Groundfish RCA

The States of Washington and Oregon manage canary and yelloweye rockfish under a joint harvest guideline for their recreational fisheries. The Washington Department of Fish and Wildlife (WDFW) committed to take management action to close portions of its recreational fisheries seaward of a boundary line approximating the 30-fm (55-m) depth contour as an inseason adjustment, if the harvest guideline for canary and/or yelloweye rockfish were projected to be reached.

At the end of July, 2005, after receiving the recreational catch data through June, WDFW's revised catch projections for the year indicated that 1.8 mt of canary rockfish would be harvested (as compared to a state harvest target of 1.7 mt, and a shared harvest guideline of 8.5 mt). At that time, the revised catch projection for yelloweye rockfish was still below the state harvest target. In response, effective August 5, 2005, WDFW adopted an emergency regulation to close its recreational bottomfish and halibut fisheries seaward of a boundary line approximating the 30-fm (55-m) depth contour from the U.S./Canada border to Leadbetter Pt., WA (46°38.17′ N. lat.) (Washington Marine Catch Areas 2, 3, and 4). The action did not apply to the area between Leadbetter Pt. and the Columbia River as the canary and yelloweye rockfish catches in this area are extremely low.

At the end of August, after receiving the recreational catch data through July, WDFW's revised catch projections for the year indicated that 1.8 mt of canary rockfish was still expected to be harvested. However, the revised catch projection for yelloweye rockfish is 4.2 mt (out of a 3.5 mt state harvest target, and a shared harvest guideline of 6.7 mt). However, it is expected that, with the fishery closed seaward of a boundary line approximating the 30-fm (55-m) depth contour, the additional yelloweye rockfish harvest will be near-zero through the end of the year.

Washington recreational fisheries for bottomfish typically decline in September and halibut fisheries close at the end of September. Therefore, further restricting the Washington recreational fishery after September will have little to no effect.

Therefore, the Pacific Council recommended and NMFS is implementing a boundary line approximating the 30-fm (55-m) depth contour between the U.S./Canada border and 46°38.17′ N. lat. (Leadbetter Point, WA) for the same reasons that Washington took its regulatory action and in order for Federal regulations to conform to the state regulations for Washington recreational groundfish fisheries.

Oregon's Recreational Groundfish Fishery Bag Limits

Due to poor recreational ocean salmon catches off Oregon in 2005, there was a notable effort shift from targeted salmon trips to targeted groundfish trips. In addition, Oregon anglers are experiencing increased catch rates of groundfish species, particularly black rockfish, blue rockfish, and yelloweye rockfish. In an effort to slow catch of groundfish species and ensure that the recreational fishery can continue through the end of the year, the Oregon Department of Fish and Wildlife (ODFW) took action, effective July 16, 2005, to reduce the marine fish daily bag limit from eight fish to five fish. In addition, ODFW revised their catch projection in the bycatch scorecard for yelloweye rockfish in the recreational fishery to 4.0 mt. The shared ODFW/WDFW yelloweye rockfish recreational harvest guideline was also revised in the bycatch scorecard from 6.7 mt to 8.5 mt (4.0 mt in Oregon, 4.2 mt in Washington, and 0.3 mt buffer).

ODFW also prohibited retention of cabezon in their recreational ocean boat fishery beginning August 11, 2005. Landings data indicated that the state imposed ocean boat harvest cap of 15.8 mt had been reached.

Therefore, the Pacific Council recommended and NMFS is implementing a decrease in the recreational marine fish daily bag limit off of Oregon from eight fish to five fish and a prohibition on the retention of cabezon by the ocean boat sector for the same reasons that Oregon took its regulatory action and in order for Federal regulations to conform to the state regulations for Oregon recreational groundfish fisheries.

Classification

These actions are authorized by the Pacific Coast groundfish FMP and implementing regulations and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment, as notice and comment would be impracticable and contrary to the public interest. The data upon which these recommendations were based were provided to the Pacific Council and the Pacific Council made its recommendations at its September 19–23, 2005, meeting in Portland, OR. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before most of these actions need to be in effect, October 1, 2005, as explained below. For the actions in this notice, prior notice and opportunity for comment would be impracticable and contrary to the public interest because affording the time necessary for prior notice and opportunity for public comment would impede the Agency's function of managing fisheries using the best available science to approach without exceeding the OYs for federally managed species. The adjustments to management measures in this document include changes to the commercial and recreational groundfish fisheries. Changes to the limited entry trawl RCA must be implemented in a timely manner by October 1, 2005, so that total catch of groundfish, specifically petrale sole and canary rockfish, stays within the catch levels projected for 2005 based on modeling and the most current catch projections available. Changes to the limited entry trawl trip limit for Dover sole must be implemented in a timely manner by October 1, 2005, so that the trip limits for all trawl gear types are the same and participants are not unnecessarily restricted to a lower harvest level because of differential trip limits. Changes to the limited entry trawl trip limit for petrale sole must be implemented in a timely manner by October 1, 2005, so that total catch stays below the petrale sole ABC/OY. Other changes to the limited entry trawl trip limits must be implemented in a timely manner by November 1, 2005, the next 2 month cumulative limit period, so that total catch of groundfish, specifically petrale sole and Dover sole, stays within the catch levels projected for 2005 based on modeling and the most current catch projections available. Changes to the widow rockfish bycatch limit in the whiting fishery must be implemented by October 1, 2005, in order to provide an opportunity for participants in this fishery to harvest the available whiting quota without being closed early due to attainment of an unnecessarily low widow rockfish bycatch limit. Changes to the limited entry fixed gear and open access DTL sablefish fishery must be implemented by October 1, 2005, in order to provide an opportunity for participants in these fisheries to harvest the available quota. Changes to Washington's recreational fishery RCA and Oregon's recreational fishery bag limits must be implemented as soon as possible in order to conform Federal and state recreational regulations, to protect overfished groundfish species, and to keep the harvest of other groundfish species within the harvest levels projected for 2005. Delaying any of these changes would result in management measures that fail to use the best available science and, in some cases, could lead to early closures of the fishery if harvest of groundfish exceeds levels projected for 2005. This would be contrary to the public interest because it would impair achievement of one of the Pacific Coast Groundfish FMP objectives of providing for year-round harvest opportunities or extending fishing opportunities as long as practicable during the fishing year. Delaying implementation could also lead to exceeding the ABC and/or OY for some species. Thus, the delay would also be contrary to the public's interest in protecting overfished species and other groundfish species from overfishing.

For these reasons, good cause also exists to waive the 30-day delay in effectiveness requirement under 5 U.S.C. 553 (d)(3) for all actions taken in this notice.

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: September 30, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.373, paragraph (b)(4) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(b) * * *

(4) *2005–2006 bycatch limits in the whiting fishery.* The bycatch limits for the whiting fishery may be used inseason to close a sector or sectors of the whiting fishery to achieve the rebuilding of an overfished or depleted stock, under routine management measure authority at § 660.370(c)(1)(ii). These limits are routine management measures under § 660.370(c) and, as such, may be adjusted inseason or may have new species added to the list of those with bycatch limits. For 2005, the whiting fishery bycatch limits for the sectors identified § 660.323(a) are 4.7 mt of canary rockfish and 212 mt of widow rockfish. For 2006, the whiting fishery bycatch limits are 7.3 mt of canary rockfish and 243.2 mt of widow rockfish.

* * * * *

■ 3. In § 660.384, paragraphs (c)(1)(i)(B) and (c)(2)(iii) are revised to read as follows:

§ 660.384 Recreational fishery management measures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) *Recreational Rockfish Conservation Area.* Fishing for groundfish with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA. A vessel fishing in the recreational RCA may not be in possession of any groundfish. For example, if a vessel participates in the recreational salmon fishery within the RCA, the vessel cannot be in possession of groundfish while in the RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the RCA on the return trip to port.) Off Washington, recreational fishing for all groundfish is prohibited seaward of a recreational RCA boundary line approximating the 30–fm (55–m) depth contour from the U.S./Canada border south to Leadbetter Pt., WA (46°38.17′

N. lat.). Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in § 660.391.

* * * * *

(2) * * *

(iii) *Bag limits, size limits.* The bag limits for each person engaged in recreational fishing in the EEZ seaward of Oregon are two lingcod per day, which may be no smaller than 24 in (61 cm) total length; and five marine fish per day, which excludes Pacific halibut, salmonids, tuna, perch species, sturgeon, sanddabs, lingcod, striped bass, hybrid bass, offshore pelagic species and baitfish (herring, smelt, anchovies and sardines), but which includes rockfish, greenling, cabezon and other groundfish species. Retention of cabezon is prohibited by Oregon's recreational ocean boat fishery, but is permitted in the shore-based fishery. The minimum size limit for cabezon retained in the recreational fishery is 16 in (41 cm) and for greenling is 10 in (26 cm). Taking and retaining canary rockfish and yelloweye rockfish is prohibited. In the Pacific halibut fisheries, retention of groundfish is governed in part by the Pacific halibut regulations. South of the Washington/Oregon border to Cape Falcon, OR, when Pacific halibut are onboard the vessel, landing groundfish, except sablefish, is prohibited. South of Cape Falcon, OR, to Humbug Mountain, OR, when Pacific halibut are onboard the vessel, retention of groundfish, except sablefish, is prohibited during the Central Coast sport halibut ''all-depth'' season days. ''All-depth'' season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS halibut hotline, 1–800–662–9825.

* * * * *

■ 4. In part 660, subpart G, Tables 3 (both North and South), Tables 4 (both North and South) and Tables 5 (both North and South) are revised to read as follows:

BILLING CODE 3510–22–P

Table 3 (North) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table

092005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]: North of 40°10' N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm			shoreline - 250 fm	
	Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
2	**Pacific ocean perch**	3,000 lb/ 2 months					
3	**DTS complex**						
4	Sablefish						
5	large & small footrope gear	9,500 lb/ 2 months		17,000 lb/ 2 months	18,000 lb/ 2 months		11,000 lb/ 2 months
6	selective flatfish trawl gear	1,500 lb/ 2 months	10,000 lb/ 2 months		15,000 lb/ 2 months		11,000 lb/ 2 months
7	multiple bottom trawl gear [8/]	1,500 lb/ 2 months	9,500 lb/ 2 months	10,000 lb/ 2 months	15,000 lb/ 2 months		11,000 lb/ 2 months
8	Longspine thornyhead						
9	large & small footrope gear	15,000 lb/ 2 months		23,000 lb/ 2 months			7,000 lb/ 2 months
10	selective flatfish trawl gear	1,000 lb/ 2 months			8,000 lb/ 2 months		7,000 lb/ 2 months
11	multiple bottom trawl gear [8/]	1,000 lb/ 2 months			8,000 lb/ 2 months		7,000 lb/ 2 months
12	Shortspine thornyhead						
13	large & small footrope gear	3,500 lb/ 2 months		4,900 lb/ 2 months	5,200 lb/ 2 months		3,500 lb/ 2 months
14	selective flatfish trawl gear	1,000 lb/ 2 months		3,000 lb/ 2 months	4,000 lb/ 2 months		3,500 lb/ 2 months
15	multiple bottom trawl gear [8/]	1,000 lb/ 2 months		3,000 lb/ 2 months	4,000 lb/ 2 months		3,500 lb/ 2 months
16	Dover sole						
17	large & small footrope gear	69,000 lb/ 2 months		30,000 lb/ 2 months		35,000 lb/ 2 months	20,000 lb/ 2 months
18	selective flatfish trawl gear	20,000 lb/ 2 months	35,000 lb/ 2 months	35,000 lb/ 2 months			20,000 lb/ 2 months
19	multiple bottom trawl gear [8/]	20,000 lb/ 2 months	35,000 lb/ 2 months	30,000 lb/ 2 months		35,000 lb/ 2 months	20,000 lb/ 2 months

TABLE 3 (North)

Table 3 (North). Continued

20	**Flatfish** (except Dover sole)				
21	Other flatfish [3/], English sole & Petrale sole				
22	large & small footrope gear for Other flatfish[3/] & English sole	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole.	110,000 lb/ 2 months, no more than 40,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, no more than 2,000 lb/ 2 months of which may be petrale sole.
23	large & small footrope gear for Petrale sole	Not limited			
24	selective flatfish trawl gear	100,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, no more than 2,000 lb/ 2 months of which may be petrale sole.
25	multiple bottom trawl gear [8/]	100,000 lb/ 2 months, no more than 25,000 lb/ 2 months of which may be petrale sole.	100,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	90,000 lb/ 2 months, no more than 35,000 lb/ 2 months of which may be petrale sole.	30,000 lb/ 2 months, no more than 2,000 lb/ 2 months of which may be petrale sole.
26	Arrowtooth flounder				
27	large & small footrope gear	Not limited	150,000 lb/ 2 months		50,000 lb/ 2 months
28	selective flatfish trawl gear	70,000 lb/ 2 months			50,000 lb/ 2 months
29	multiple bottom trawl gear [8/]	70,000 lb/ 2 months			50,000 lb/ 2 months
30	**Whiting**				
31	midwater trawl	Before the primary whiting season: CLOSED -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED			
32	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip -- During the primary season: 10,000 lb/trip - After the primary whiting season: 10,000 lb/trip			
33	**Minor shelf rockfish[1/], Shortbelly, Widow & Yelloweye rockfish**				
34	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED			
35	large & small footrope gear	300 lb/ 2 months			
36	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month
37	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish	300 lb/ month

TABLE 3 (North) con't

Table 3 (North). Continued

					TABLE 3 (North) con't
38	**Canary rockfish**				
39	large & small footrope gear	CLOSED			
40	selective flatfish trawl gear	100 lb/ month	300 lb/ month	100 lb/ month	
41	multiple bottom trawl gear [8/]	CLOSED			
42	**Yellowtail**				
43	midwater trawl	Before the primary whiting season: CLOSED -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED			
44	large & small footrope gear	300 lb/ 2 months			
45	selective flatfish trawl gear	2,000 lb/ 2 months			
46	multiple bottom trawl gear [8/]	300 lb/ 2 months			
47	**Minor nearshore rockfish & Black rockfish**				
48	large & small footrope gear	CLOSED			
49	selective flatfish trawl gear	300 lb/ month			
50	multiple bottom trawl gear [8/]	CLOSED			
51	**Lingcod** [4/]				
52	large & small footrope gear	500 lb/ 2 months			
53	selective flatfish trawl gear	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
54	multiple bottom trawl gear [8/]	500 lb/ 2 months			
55	**Other Fish** [5/] **& Pacific cod**	Not limited			

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Trawl Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 092005

	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[6/]:						
40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	100 fm - 150 fm		shoreline - 250 fm	
38° - 36° N. lat.	75 fm - 150 fm	100 fm - 150 fm			shoreline - 200 fm	
36° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm			50 fm - 200 fm	
South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands			50 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands	
Small footrope gear is required shoreward of the RCA; all trawl gear (large footrope, midwater trawl, and small footrope gear) is permitted seaward of the RCA.						
See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1 **Minor slope rockfish[2/] & Darkblotched rockfish**						
2 40°10' - 38° N. lat.	4,000 lb/ 2 months		8,000 lb/ 2 months	20,000 lb/ 2 months	8,000 lb/ 2 months	6,000 lb/ 2 months
3 South of 38° N. lat.	40,000 lb/ 2 months					
4 **Splitnose**						
5 40°10' - 38° N. lat.	4,000 lb/ 2 months		8,000 lb/ 2 months	20,000 lb/ 2 months	8,000 lb/ 2 months	6,000 lb/ 2 months
6 South of 38° N. lat.	40,000 lb/ 2 months					
7 **DTS complex**						
8 Sablefish	14,000 lb/ 2 months			16,000 lb/ 2 months		9,000 lb/ 2 months
9 Longspine thornyhead	19,000 lb / 2 months					11,000 lb/ 2 months
10 Shortspine thornyhead	4,200 lb/ 2 months			4,600 lb/ 2 months		3,500 lb/ 2 months
11 Dover sole	50,000 lb/ 2 months		40,000 lb/ 2 months			30,000 lb/ 2 months
12 **Flatfish** (except Dover sole)						
13 Other flatfish[3/] & English sole						
14 40°10' - 38° N. lat.	110,000 lb/ 2 months	Other flatfish, English sole & Petrale sole: 110,000 lb/ 2 months, no more than 42,000 lb/ 2 months of which may be petrale sole			110,000 lb/ 2 months	30,000 lb/ 2 months
15 South of 38° N. lat.						40,000 lb/ 2 months
16 Petrale sole	No limit				CLOSED	2,000 lb/ 2 months

TABLE 3 (South)

Table 3 (South). Continued

17	Arrowtooth flounder				
18	40°10' - 38° N. lat.	No limit	10,000 lb/ 2 months	10,000 lb/ 2 months	
19	South of 38° N. lat.			5,000 lb/ 2 months	
20	**Whiting**				
21	midwater trawl	Before the primary whiting season: CLOSED -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED			
22	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip -- During the primary season: 10,000 lb/trip - After the primary whiting season: 10,000 lb/trip			
23	**Minor shelf rockfish[1/], Chilipepper, Shortbelly, Widow, & Yelloweye rockfish**				
24	large footrope or midwater trawl for Minor shelf rockfish & Shortbelly	300 lb/ month			
25	large footrope or midwater trawl for Chilipepper	2,000 lb/ 2 months	12,000 lb/ 2 months	8,000 lb/ 2 months	
26	large footrope or midwater trawl for Widow & Yelloweye	CLOSED			
27	small footrope trawl	300 lb/ month			
28	**Bocaccio**				
29	large footrope or midwater trawl	300 lb/ 2 months			
30	small footrope trawl	CLOSED			
31	**Canary rockfish**				
32	large footrope or midwater trawl	CLOSED			
33	small footrope trawl	100 lb/ month	300 lb/ month	100 lb/ month	
34	**Cowcod**	CLOSED			
35	**Minor nearshore rockfish & Black rockfish**				
36	large footrope or midwater trawl	CLOSED			
37	small footrope trawl	300 lb/ month			
38	**Lingcod[4/]**				
39	large footrope or midwater trawl	500 lb/ 2 months			
40	small footrope trawl	800 lb/ 2 months	1,000 lb/ 2 months	800 lb/ 2 months	
41	**Other Fish[5/] & Cabezon**	Not limited			

TABLE 3 (South) con't

1/ Yellowtail is included in the trip limits for minor shelf rockfish.
2/ POP is included in the trip limits for minor slope rockfish
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
5/ Other fish are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
7/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (North) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Fixed Gear North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 092005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	4,000 lb/ 2 months					
2	**Pacific ocean perch**	1,800 lb/ 2 months					
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months				500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 9,000 lb/ 2 months	
4	**Longspine thornyhead**	10,000 lb/ 2 months					
5	**Shortspine thornyhead**	2,000 lb/ 2 months					
6	**Dover sole**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
7	**Arrowtooth flounder**						
8	**Petrale sole**						
9	**English sole**						
10	**Other flatfish[1/]**						
11	**Whiting**	10,000 lb/ trip					
12	**Minor shelf rockfish[2/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
13	**Canary rockfish**	CLOSED					
14	**Yelloweye rockfish**	CLOSED					
15	**Minor nearshore rockfish & Black rockfish**						
16	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]					
17	42° - 40°10' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]			6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[3/]		
18	**Lingcod[4/]**	CLOSED		800 lb/ 2 months			CLOSED
19	**Other fish[5/] & Pacific cod**	Not limited					

TABLE 4 (North)

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish and splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

4/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."

6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 092005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]:						
	40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.382 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months					
2	**Splitnose**	40,000 lb/ 2 months					
3	**Sablefish**						
4	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 9,000 lb/ 2 months
5	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
6	**Longspine thornyhead**	10,000 lb / 2 months					
7	**Shortspine thornyhead**	2,000 lb/ 2 months					
8	**Dover sole**	5,000 lb/ month When fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
9	**Arrowtooth flounder**						
10	**Petrale sole**						
11	**English sole**						
12	**Other flatfish[1/]**						
13	**Whiting**	10,000 lb/ trip					
14	**Minor shelf rockfish[2/], Shortbelly, & Widow rockfish**						
15	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
16	South of 34°27' N. lat.	2,000 lb/ 2 months		2,000 lb/ 2 months	3,000 lb/ 2 months		
17	**Chilipepper rockfish**	2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA					
18	**Canary rockfish**	CLOSED					
19	**Yelloweye rockfish**	CLOSED					
20	**Cowcod**	CLOSED					
21	**Bocaccio**						
22	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months	300 lb/ 2 months		
23	South of 34°27' N. lat.	300 lb/ 2 months		300 lb/ 2 months			
24	**Minor nearshore rockfish & Black rockfish**						
25	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
26	Deeper nearshore						
27	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months		400 lb/ 2 months	500 lb/ 2 months
28	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
29	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months

TABLE 4 (South)

Table 4 (South). Continued

30	**Lingcod[3/]**	CLOSED	800 lb/ 2 months	CLOSED	
31	**Other fish[4/] & Cabezon**	Not limited			

1/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish.

3/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (North) to Part 660, Subpart G -- 2005-2006 Trip Limits for Open Access Gears North of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 092005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
	North of 46°16' N. lat.	shoreline - 100 fm					
	46°16' N. lat. - 40°10' N. lat.	30 fm - 100 fm					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[1/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
2	**Pacific ocean perch**	100 lb/ month					
3	**Sablefish**	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months					500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 9,000 lb/ 2 months
4	**Thornyheads**	CLOSED					
5	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.					
6	**Arrowtooth flounder**						
7	**Petrale sole**						
8	**English sole**						
9	**Other flatfish[2/]**						
10	**Whiting**	300 lb/ month					
11	**Minor shelf rockfish[1/], Shortbelly, Widow, & Yellowtail rockfish**	200 lb/ month					
12	**Canary rockfish**	CLOSED					
13	**Yelloweye rockfish**	CLOSED					
14	**Minor nearshore rockfish & Black rockfish**						
15	North of 42° N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]					
16	42° - 40°10' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]			6,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish [3/]		
17	**Lingcod[4/]**	CLOSED		300 lb/ month			CLOSED
18	**Other Fish[5/] & Pacific cod**	Not limited					
19	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
20	North	**Effective April 1 - October 31:** groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					
21	**SALMON TROLL**						
22	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons and RCA restrictions listed in the table above.					

TABLE 5 (North)

1/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for minor shelf rockfish.
Splitnose rockfish is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
4/ The size limit for lingcod is 24 inches (61 cm) total length.
5/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling.
Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 5 (South) to Part 660, Subpart G -- 2005-2006 Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.301 - § 660.390 before using this table 092005

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[5/]: 40°10' - 34°27' N. lat.	30 fm - 150 fm		20 fm - 150 fm		30 fm - 150 fm	
	South of 34°27' N. lat.	60 fm - 150 fm (also applies around islands)					
	See § 660.370 and § 660.383 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, and Cordell Banks).						
	State trip limits may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
1	**Minor slope rockfish[1/] & Darkblotched rockfish**						
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed					
3	South of 38° N. lat.	10,000 lb/ 2 months					
4	**Splitnose**	200 lb/ month					
5	**Sablefish**						
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 900 lb, not to exceed 3,600 lb/ 2 months				500 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 9,000 lb/ 2 months	
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb					
8	**Thornyheads**						
9	40°10' - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.					
12	**Arrowtooth flounder**						
13	**Petrale sole**						
14	**English sole**						
15	**Other flatfish[2/]**						
16	**Whiting**	300 lb/ month					
17	**Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish**						
18	40°10' - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
19	South of 34°27' N. lat.	500 lb/ 2 months		500 lb/ 2 months	750 lb/ 2 months		
20	**Canary rockfish**	CLOSED					
21	**Yelloweye rockfish**	CLOSED					
22	**Cowcod**	CLOSED					
23	**Bocaccio**						
24	40°10' - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
25	South of 34°27' N. lat.	100 lb/ 2 months		100 lb/ 2 months			
26	**Minor nearshore rockfish & Black rockfish**						
27	Shallow nearshore	300 lb/ 2 months	CLOSED	500 lb/ 2 months	600 lb/ 2 months	500 lb/ 2 months	300 lb/ 2 months
28	Deeper nearshore						
29	40°10' - 34°27' N. lat.	500 lb/ 2 months	CLOSED	500 lb/ 2 months		400 lb/ 2 months	500 lb/ 2 months
30	South of 34°27' N. lat.			600 lb/ 2 months			400 lb/ 2 months
31	California scorpionfish	300 lb/ 2 months	CLOSED	300 lb/ 2 months	400 lb/ 2 months		300 lb/ 2 months

TABLE 5 (South)

Table 5 (South). Continued

32	**Lingcod**[3/]	CLOSED	300 lb/ month, when nearshore open		CLOSED
33	**Other Fish**[4/] **& Cabezon**	Not limited			
34	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*				
35	South	**Effective April 1 - October 31:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.			
36	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**				
37	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut and Sea Cucumber:**				
38	40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	100 fm - 150 fm	75 fm - 150 fm
39	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm		
40	South of 34°27' N. lat.	75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands		75 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands
41	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for Ridgeback Prawn:**				
42	40°10' - 38° N. lat.	75 fm - modified 200 fm [7/]	100 fm - 200 fm	100 fm - 150 fm	75 fm - 150 fm
43	38° - 34°27' N. lat.	75 fm - 150 fm	100 fm - 150 fm		
44	South of 34°27' N. lat.	100 fm - 150 fm along the mainland coast; shoreline - 150 fm around islands			
45		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).			

TABLE 5 (South) con't

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.
2/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, sand sole, and starry flounder.
3/ The size limit for lingcod is 24 inches (61 cm) total length.
4/ "Other fish" are defined at § 660.302 and include sharks, skates, ratfish, morids, grenadiers, and kelp greenling. Pacific cod is included in the trip limits for "other fish."
5/ The Rockfish Conservation Area is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at § 660.390.
6/ The "modified 200 fm" line is modified to exclude certain petrale sole areas from the RCA.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 05–19986 Filed 9–30–05; 2:36 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 70, No. 192
Wednesday, October 5, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–134–1]

Karnal Bunt; Criteria for Releasing Fields From Regulation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Karnal bunt regulations regarding the requirements that must be met in order for a field or area to be removed from the list of regulated areas. The proposed changes would allow a field to qualify for release after 5 cumulative years of specified management practices, rather than 5 consecutive years as the current regulations provide, and reorganize the manner in which those management practices are described. These proposed changes would clarify the existing regulations and provide growers in regulated areas with greater flexibility in their planting decisions.

DATES: We will consider all comments that we receive on or before December 5, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0080 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–134–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–134–1.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

The domestic quarantine and other regulations regarding Karnal bunt are set forth in §§ 301.89–1 through 301.89–16 (referred to below as the regulations) and are designed to prevent the spread of Karnal bunt. Paragraph (f) of § 301.89–3 describes the criteria under which a field and any surrounding non-infected acreage may be released from regulation for Karnal bunt. Currently, the regulations provide two ways for a field to be released from regulation, which are described in paragraphs (f)(1) and (f)(2). We are proposing to make modifications to each of those paragraphs in order to update and clarify the regulations.

Paragraph (f)(1) of the regulations currently provides that a field will be released from regulation for Karnal bunt when it is ''no longer being used for crop production.'' This criterion has normally applied when land is removed from agricultural use, *e.g.*, the land is sold and subdivided for home construction. To make it clear that this criterion applies to land permanently removed from agricultural use, rather than land that may have been only temporarily taken out of production, we would amend the regulations to specifically state that the field must have been permanently removed from crop production in order to be released from regulation for Karnal bunt.

Paragraph (f)(2) of the regulations currently states that a field will be released from regulation for Karnal bunt if each year for a period of 5 consecutive years, the field is subjected to any one of the following management practices (the practice used may vary from year to year):

- Planted with a cultivated non-host crop;
- Tilled once annually; or
- Planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt.

We are proposing to revise paragraph (f)(2) to state that a field will be released from regulation for Karnal bunt if the field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the crop must test negative, through the absence of bunted kernels, for Karnal bunt.

The main difference between the proposed text and the text in the current regulations is that the revised paragraph would not require the specific management practices to be carried out for 5 consecutive years. The current consecutive years requirement means that if a producer skipped a year or more—*i.e.*, did not plant or till the field in a given year—the producer would have to begin the 5-year time period again. However, no scientific basis exists to require producers to start over, as there is no effect, positive or negative,

on the Karnal bunt status of the field if the management practices are not used. If a field was left untilled and fallow, or planted using no-till techniques, there may not be the reduction in the spore load in the soil that is realized with tilling, but there would also not be any increase in the spore load. Thus, if a farmer chose not to apply one of the management practices during a given year, we do not believe that it is necessary to restart the counting of years, thus negating any progress that may have been made toward the 5-year goal. Therefore, we would amend the regulations to remove the current requirement that the management practices be applied over 5 consecutive years.

Our additional proposed changes to the text of paragraph (f)(2) involve rewording the description of the management practices to make the requirements clearer. Each of the management practices listed in the current regulations involves tilling, but ''tilled once annually'' is listed as a discrete practice. As the other two management practices involve planting the field with a crop—either a cultivated non-host crop or a host crop that tests negative for Karnal bunt—it stands to reason that a field meeting the ''tilled once annually'' criterion would have been left fallow. Therefore, we are proposing to revise the description of management practices to provide that, for each year counted toward the 5 cumulative years, the field is tilled and either: (1) Planted with a non-host crop, (2) left fallow, or (3) planted with a host crop that tests negative, through the absence of bunted kernels, for Karnal bunt. While this proposed change to our description of the management practices would not alter the substance of the current regulations, we believe that it would serve to clarify the criteria that must be met in order for a field to be released from regulation for Karnal bunt.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Karnal bunt regulations regarding the requirements that must be met in order for a field or area to be removed from the list of regulated areas. The proposed changes would allow a field to qualify for release after 5 cumulative years of specified management practices, rather than 5 consecutive years as the current regulations provide. These proposed changes would clarify the existing regulations and provide growers in regulated areas with greater flexibility in their planting decisions.

Compared to the current regulations, the proposed change to 5 cumulative years using the specified management practices would afford regulated wheat producers greater flexibility in the planting cycle; they can elect not to till in a particular year without having to start over to satisfy the 5 consecutive years requirement for deregulation. However, as a practical matter, the proposed change should have little or no impact, as the ''consecutive years'' criterion has been in effect only since March 2004, near the end of the 2003–2004 crop season, and has not prevented any fields from being released that APHIS field personnel and managers determined were otherwise eligible for release from regulation.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. The Karnal bunt regulations have the potential to have the most impact on wheat producers. At the present time, parts of Texas, Arizona, and California are regulated for Karnal bunt. In Texas, there are approximately 285,000 agricultural acres and about 550 wheat producers under regulation. The equivalent figures for Arizona and California are, respectively, 278,000 acres (120 producers) and 56,000 acres (18 producers).

As determined by the Small Business Administration (SBA), the small entity size standard for wheat farming, which is defined as farms ''primarily engaged in growing wheat and/or producing wheat seeds'' (North American Industry Classification System code 11114), is $750,000 or less in annual receipts. Although the size of regulated wheat producers is unknown, they are likely to be small in size under SBA standards. This assumption is based on composite data for providers of the same and similar services. In 2002, Arizona had a total of 7,294 farms of all types. Of those farms, 91 percent had annual sales that year of less than $500,000, well below the SBA's small entity threshold. Similarly, the comparable percentages for Texas (228,926 total farms) and California (79,631 total farms) were 99 percent and 90 percent, respectively. (Source: SBA and NASS, 2002 Census of Agriculture.) Although many of these businesses are considered small under SBA standards, given the reason cited above, the proposed change should have little or no economic impact on small entities, wheat producers or otherwise.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.89–3, paragraph (f) would be revised to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(f) A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, will be released from regulation if:

(1) The field has been permanently removed from crop production; or

(2) The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the crop must test negative, through the absence of bunted kernels, for Karnal bunt.

* * * * *

Done in Washington, DC, this 29th day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19943 Filed 10–4–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A39; DA–04–03A]

Milk in the Upper Midwest Marketing Area; Final Partial Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt as a final rule, order language contained in the interim final rule published in the **Federal Register** on June 1, 2005, concerning pooling standards and transportation credit provisions of the Upper Midwest (UMW) milk marketing order. This document also sets forth the final decision of the Department and is subject to approval by producers. A separate decision will be issued that will address proposals concerning pooling and repooling of milk, temporary loss of Grade A status, and increasing the maximum administrative assessment.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION: This final partial decision permanently adopts amendments to Pool plant provisions to ensure that producer milk originating outside the states that comprise the UMW order (Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan) is providing consistent service to the order's Class I market, and to Producer milk provisions to eliminate the ability to pool, as producer milk, diversions to nonpool plants outside of the states that comprise the UMW marketing area. Additionally, this final partial decision permanently adopts a proposal to limit the transportation credit received by handlers to the first 400 miles of applicable milk movements.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the Act), as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During August 2004, the month during which the hearing occurred, there were 15,608 dairy producers pooled on, and 60 handlers regulated by, the UMW order. Approximately 15,082 producers, or 97 percent, were considered small businesses based on the above criteria. Of the 60 handlers regulated by the UMW order during August 2004, approximately 49 handlers, or 82 percent, were considered ''small businesses.''

The adoption of the proposed pooling standards serve to revise established criteria that determine those producers, producer milk and plants that have a reasonable association with and are consistently serving the fluid needs of the UMW milk marketing area. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid milk needs of the market and by doing so, determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. The criteria established for transportation credits are also applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would

remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This decision does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports from all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules. This rulemaking proceeding does not duplicate, overlap, or conflict with any existing Federal rules.

Prior documents in this proceeding:

Notice of Hearing: Issued June 16, 2004; published June 23, 2004 (69 FR 34963).

Notice of Hearing Delay: Issued July 14, 2004; published July 21, 2004 (69 FR 43538).

Tentative Partial Decision: Issued April 8, 2005; published April 14, 2005 (70 FR 19709).

Interim Final Rule: Issued May 26, 2005; published June 1, 2005 (70 FR 31321).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice (7 CFR part 900), at Bloomington, Minnesota, on August 16–19, 2004, pursuant to a notice of hearing issued June 16, 2004, published June 23, 2004 (69 FR 34963), and a notice of a hearing delay issued July 14, 2004, published July 21, 2004 (69 FR 43538).

The material issues, findings, conclusions and rulings of the tentative partial decision are hereby approved, adopted and are set forth herein. The material issues on the record of the hearing relate to:

1. Pooling Standards—Changing performance standards and diversion limits.

2. Transportation credits.

3. Determination of whether emergency marketing conditions existed that warranted the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

This final partial decision specifically addresses Proposals 1, 6 and features of Proposal 2 that are intended to better identify the milk of those producers who provide a reasonable and consistent service to the Class I needs of the UMW marketing area and thereby become eligible to pool on the UMW order. This decision also limits transportation credits received by handlers to the first 400 miles of applicable milk movements. Proposals 3, 4, 5, 7, a portion of Proposal 2 that addresses pooling and repooling, and a portion of Proposal 6 that addresses temporary loss of Grade A approval will be addressed in a separate decision. Hereinafter, any references to Proposal 2 will only pertain to the portions of the proposal that would limit the pooling of ''distant'' milk and amend transportation credit provisions, and references to Proposal 6 will only pertain to the ''touch-base'' standard portion of the proposal.

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards

Several proposed changes to the pooling standards of the UMW order, previously adopted on an interim basis, are adopted on a permanent basis by this final partial decision. Certain inadequacies of the current pooling provisions are resulting in large volumes of milk pooled on the UMW order which do not demonstrate a reasonable and consistent servicing of the UMW Class I market.

Specifically, the following amendments were adopted in the tentative partial decision and are adopted on a permanent basis in this final partial decision: (1) Only supply plants located in Illinois, Iowa, Minnesota, North Dakota, South Dakota, Wisconsin, and the Upper Peninsula of Michigan (hereinafter referred to as the ''7-state milkshed'') may use milk delivered directly from producers' farms for qualification purposes; and (2) Of diversions to nonpool plants, only diversions to those plants located in the 7-state milkshed will be considered producer milk under the order. These amendments to the pooling standards were contained in Proposals 1 and 2, as published in the hearing notice and as modified at the hearing.

Three proposals (Proposals 1, 2, and 6) seeking to limit the pooling of ''distant'' milk were considered in this proceeding. The proponents of these proposals are of the opinion that the current pooling provisions of the order enable milk to become pooled on the order that does not service the Class I needs of the UMW market. According to the proponents, such milk currently need only make an initial qualifying delivery to a pool plant to become pooled on the order. The witnesses assert that this is causing the unwarranted lowering of the order's blend price.

Proposal 1 was offered by Associated Milk Producers, Inc. (AMPI), Bongards' Creameries, Ellsworth Cooperative Creameries, and First District Association. Hereinafter, this decision will refer to these proponents as ''AMPI, et al.'' All are cooperative associations whose members' milk is pooled on the UMW order.

Proposal 2 was offered by Mid-West Dairymen's Company on behalf of Cass-Clay Creamery, Inc. (Cass-Clay), Dairy Farmers of America, Inc. (DFA), Foremost Farms USA Cooperative (Foremost Farms), Land O'Lakes, Inc. (LOL), Manitowoc Milk Producers Cooperative (MMPC), Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers (MCMP), Swiss Valley Farms Company (Swiss Valley), and Woodstock Progressive Milk Producers Association. Hereinafter, this decision will refer to these proponents as ''Mid-West, et al.'' Although Foremost Farms was a proponent of Proposal 2, no testimony was offered on their behalf. At the hearing, Plainview Milk Products Cooperative and Westby Cooperative Creamery also supported the testimony of Mid-West, et al. The proponents of Proposal 2 are qualified cooperatives representing producers whose milk supplies the milk needs of the marketing area and is pooled on the UMW order.

Proposal 6, offered by Dean Foods Company (Dean), which also addresses the pooling of distant milk, is not adopted. Proposal 6 sought to increase the number of days that a dairy farmer's milk production would need to be delivered to a UMW pool plant from the current 1 day to 2 days before the milk of the dairy farmer would be eligible for diversion to a nonpool plant and have such diverted milk pooled on the order. This is commonly referred to by the industry as a ''touch-base'' standard. If this standard was not met for each of the months of July through November, Proposal 6 would have required that the touch-base standard be increased to 2

days for each of the months of December though June. If the July through November touch-base standard of Proposal 6 was met, there would be no touch-base standard applicable for the months of December through June. Additionally, Proposal 6 would also specify that if a producer lost association with the UMW order, except as caused by a loss in Grade A status, the producer would need to meet the 2-day touch-base standard in the intended month for qualifying as a producer on the order and for pooling eligibility.

During the hearing, Dean's witnesses made many modifications to their proposals which were further clarified in a post-hearing brief. In their brief, Dean explained that Proposal 6, as modified, intended that a dairy farmer's qualifying shipment could be made anytime during the month.

Currently, the UMW order provides that a supply plant can qualify as a pool plant of the order by delivering 10 percent of its total monthly milk receipts to a pool distributing plant, a producer-handler, a partially regulated distributing plant, or a distributing plant regulated by another Federal order. A supply plant may meet this requirement by shipping milk directly from dairy farms regardless of their location. Additionally, producer milk can be diverted to any nonpool plant, without regard to location, as long as the producer met the touch-base standard during the first qualifying month.

A witness appearing on behalf of AMPI, et al., testified in support of Proposal 1. The witness stated that since Federal order reform, and as a result of other Federal order hearings over the last several years, the UMW pooling provisions have allowed milk to be pooled on the order from as far as California, Idaho, Utah, Oregon, Colorado, Montana, Nebraska, Ohio, Indiana, and Georgia. The witness explained that a previous UMW decision, which became effective May 1, 2002, only resulted in prohibiting the ability to simultaneously pool the same milk on the UMW order and on a State-operated milk order that had marketwide pooling. The witness noted that during the same time period, however, amendments to the pooling standards of the Central and Mideast milk marketing orders resulted in a tightening of their pooling standards, moving milk formerly pooled on those two orders onto the UMW marketwide pool which reduced the blend price and producer price differential (PPD) received by UMW dairy farmers.

The AMPI, et al., witness testified that in December 2003, 263 million pounds, or 12.3 percent of producer milk, pooled on the UMW order was located in Idaho. The witness also noted that for the same month, Jerome County, Idaho, had the most producer milk of any county pooled on the UMW order. The witness was of the opinion that milk seeks to be pooled on the UMW order when it cannot qualify for pooling in its own geographic area. The witness explained that milk located far from the UMW area seeks to be pooled on the UMW order because the pooling provisions of the UMW order are so liberal and because it is economically advantageous to do so.

The AMPI, *et al.*, witness stated that current order provisions allow any handler whose producers have touched base at a UMW pool plant, to pool 10 times the amount of milk shipped to a distributing plant and divert up to 90 percent of its milk supply to any nonpool plant. The witness stressed that this has resulted in Idaho producers pooling their milk on the UMW order by simply meeting the one-day touch-base standard and then diverting future milk production to a nonpool plant nearer to their farms in Idaho.

The AMPI, *et al.*, witness compared the actual PPD versus a scenario in which a PPD was computed without Idaho milk. The witness noted that in 2003 the actual PPD was a negative 5 cents while under their scenario the estimated PPD without Idaho milk would have been a positive $0.19, a $0.24 total difference. The witness testified that UMW dairy farmers in effect received $36.5 million less for their milk in 2003 due to the $0.24 average difference in the actual versus estimated PPD. The witness asserted that Idaho milk was not physically supplying the market and was never intended to supply the market. The witness also added that additional Idaho milk not previously pooled on the UMW order could be pooled on the UMW order because of the termination of the Western milk marketing order on April 1, 2004.

The AMPI, *et al.*, witness stressed that Proposal 1 is not intended to prohibit the pooling of milk based on its distance from the UMW marketing area. The witness explained that any supply plant, regardless of its location, that delivers 10 percent of its producer receipts to a UMW distributing plant in the order would qualify their total receipts for pooling. The witness also explained that Proposal 1 would lessen the incentive to pool milk that does not demonstrate a consistent servicing of the UMW market's Class I needs.

A post-hearing brief submitted by AMPI asserted that $3 million per month is being siphoned off of the UMW marketwide pool by producers located long distances from the UMW and whose milk demonstrates no service to the UMW's fluid market. Their brief also reiterated that the termination of the Western order has resulted in a further lowering of blend prices received by UMW dairy farmers as more unpooled milk seeks easy and profitable pooling opportunities. The brief explained that the loss of income to UMW dairy farmers merits the need for an emergency action.

A witness appearing on behalf of Mid-West, *et al.*, testified in support of Proposal 2. The witness stated that milk located within the 7-state milkshed is already more than adequate to serve the fluid needs of the market. The witness asserted that Idaho milk is located too far from the market, in excess of 1,000 miles, to serve as a reliable reserve supply. The witness concluded that such milk should not be considered a consistent supply for the UMW marketing area. The Mid-West, *et al.*, witness explained that often when Idaho milk makes a pool qualifying one-day touch-base delivery to a distributing plant, milk produced and located within the marketing area has to be diverted from the distributing plant to accommodate the one-time physical receipt. The witness was of the opinion that this is tantamount to the local milk supply balancing the Idaho milk supply, rather than Idaho milk balancing the local milk supplies of the UMW market. Furthermore, the witness was of the opinion that if not for inadequate pooling provisions, milk located far from the market would not seek to be pooled because the cost of servicing the market would be prohibitive.

The Mid-West, *et al.*, witness said that typically the milk in Idaho pays a fee to a UMW handler for pooling and that these fees have become a significant revenue stream for some UMW handlers who seek to offset lower PPDs and increase their financial returns to producer members. The witness stated that in this way, milk located in the UMW marketing area is essentially used to qualify milk located in Idaho as UMW milk. Because Idaho milk is reported as a receipt by UMW handlers, it receives the benefit of the UMW PPD although it is never actually delivered to the UMW market except for the initial association. The witness said that in December 2003, more milk was pooled on the UMW order from Jerome County, Idaho, than from any other county in the country. The witness was of the opinion that the Idaho milk would not seek to be pooled if it had to meet the order's performance standards on its own merit because the cost of transporting it to a

UMW distributing plant would exceed the monetary benefit of being pooled on the order. The witness insisted that the only way that milk located far from the market could be considered a reliable supplier to the UMW market is if it consistently provided service to the UMW fluid market on its own merit.

The Mid-West, *et al.*, witness stated that the impact on the PPD from the growing amount of Idaho milk pooled on the order has become significant. For example, the witness estimated that in September 2003, the PPD was reduced by $0.73. The witness stressed that while some entities were benefiting from the pooling of such milk by collecting pooling fees, all of the market's participants were being negatively affected because of the reduction in the PPD. The witness also noted that the termination of the Western order has only compounded the problem because milk once pooled and priced on the former Western order is seeking the price protection offered by another Federal milk order.

The Mid-West, *et al.*, witness maintained that it is the UMW's lenient performance standards that have enabled milk to participate and benefit from the UMW marketwide pool without demonstrating consistent and reliable service to the market. The witness also stressed that Proposal 2 does not treat in-area and out-of-area milk of a supply plant differently. The witness explained that both must ship 10 percent of their total milk receipts to a distributing plant to qualify as a pool plant for the order. Requiring this as a pooling standard for all supply plants, the witness said, will end the practice of using local milk supplies to qualify milk for pooling that has no physical tie to the marketing area.

A brief submitted by Mid-West, *et al.*, noted that less than one tenth of one percent of Idaho milk pooled on the UMW order was delivered to a pool distributing plant from April 2001 through May 2004 as evidence of such milk's lack of reasonable and consistent service to the UMW market. Furthermore, the brief noted that only 0.21 percent of the pooled Idaho milk pooled was delivered to a UMW pool plant of any type during the same time period. The brief contended that statistics prepared by the Market Administrator's office indicated that the UMW order's blend price had been reduced approximately 25 cents per hundredweight continuously since 2003 by pooling Idaho milk. The Mid-West, *et al.*, brief reiterated that Proposal 2 does not prevent milk located far from the marketing area from being pooled. Rather, explained the brief, it would establish an appropriate performance standard so that milk which does not consistently service the Class I needs of the UMW market could not be pooled on the order.

Exceptions to the tentative partial decision from Mid-West, *et al.*, commented that the adoption of standards to deter the pooling of out-of-area milk that does not provide a reliable and consistent service to the Class I market is appropriate.

A witness appearing on behalf of LOL testified in support of Proposal 2. The witness asserted that milk located in Idaho and pooled on the UMW market is lowering the UMW PPD, thereby negatively impacting LOL's local producers. However, as a supporter of performance-based pooling, the witness was of the opinion that Proposal 2 places additional standards on milk produced outside the 7-state milkshed. While the LOL witness was of the opinion that such pooling issues should be addressed at a national hearing, the witness nevertheless supported Proposal 2 because it addresses the low PPDs being received by UMW producers.

A witness appearing on behalf of MMPC testified in support of Proposal 2. The witness stated that MMPC has a small group of members located in Idaho that represent a significant amount of pooled milk on the UMW order. The witness explained that all members of MMPC pay a 2-cent per hundredweight checkoff on their milk for services provided by MMPC, and their Idaho members checkoff payment provides significant additional revenue to the cooperative. However, the witness said that all of the producer members of MMPC who pool their milk on the UMW order would be better off without pooling the milk from Idaho. According to the witness, the reduction in the PPD is greater than the 2-cent per hundredweight checkoff payment they receive for pooling Idaho milk.

A witness appearing on behalf of DFA also testified in support of Proposal 2. The DFA witness stated that the performance standards of the UMW order should limit the amount of milk pooled on the order to only that milk which can be reasonably considered a regular and consistent supply of the market.

The DFA witness offered various pooling scenarios to illustrate that milk located in Idaho would not seek to be pooled on the UMW order if such milk were expected to make regular and consistent deliveries to pool plants. For all the scenarios, the witness assumed a hauling rate of $2.10 per loaded mile, a $1.60 Class I differential, and a transportation credit of 400 miles. The witness said that under these assumptions, milk would likely not seek to be pooled on the UMW order because the costs incurred would exceed the revenue received by being pooled on the UMW order. Additionally, the witness said that if the pooling standards are not amended to establish an appropriate level of consistent service, more milk will seek to be pooled on the order and would result in a continued lowering of the order's blend price.

The DFA witness stressed that the order's performance standards must more clearly define what milk can reasonably be considered a consistent supply to the market. According to the witness, the underpinning logic of Federal order pricing is that milk supplies located closer to the market have a higher value than those farther away. Predecessor orders had location adjustments that were a mechanism for assigning differing values to milk depending on its distance to the market, explained the witness. Milk located farther from the marketing area was less valuable to the market, thus recognizing that more local milk supplies had a higher value because it cost much less to transport local milk supplies to the market, the witness said. The witness stated that location adjustments were once an important method of achieving pooling discipline. While there were no proposals regarding location adjustments under consideration, the witness explained, adoption of Proposal 2 would achieve a similar economic result—establishing a relationship between the value of milk and its distance from the market. The witness stressed that Proposal 2 would provide the framework to more accurately identify the milk of those producers which can reasonably be considered as reliable suppliers to the UMW fluid market.

A witness appearing on behalf of Cass-Clay testified in support of Proposal 2. Cass-Clay is a dairy farmer-owned cooperative located in the UMW marketing order that processes 45 percent of its total milk receipts into Class I products. The witness explained that Cass-Clay does pool distant milk for a fee which generates revenue to offset some of the negative PPDs received by UMW dairy farmers. According to the witness, the revenue generated from pooling fees has enabled Cass-Clay to support their members' mailbox price and retain membership in a highly competitive market. The witness also stated that Cass-Clay does not favor pooling Idaho milk and supports Proposal 2 because it would limit the

ability to pool milk that is located far from the UMW marketing area.

A witness appearing on behalf of MCMP testified in support of Proposal 2. The witness was of the opinion that if distant producers want to collect money from the UMW marketwide pool, they should be regularly and consistently serving the UMW market. It was MCMP's position that Proposal 2 is fair and right for the market as a whole.

A witness appearing on behalf of the Galloway Company testified in support of Proposal 2. Galloway Company owns and operates a Class II manufacturing plant regulated by the UMW order. The witness was of the opinion that Proposal 2 would reduce the amount of milk pooled on the UMW order that is not actually serving the fluid market.

A witness appearing on behalf of the Wisconsin, North Dakota, and Minnesota Farmers Unions (Farmers Unions) testified in support of limiting the ability of milk to pool on the UMW order that is located far from the marketing area. However, the witness did not express support for any particular proposal. The witness said that pooling milk from far outside the UMW marketing area has had an adverse economic effect on producers who do regularly supply the UMW market. The witness stated that pooling such milk was placing an undue hardship on UMW dairy producers who regularly and consistently serve the Class I needs of the UMW market by reducing their revenue.

A dairy farmer, who is a Director on the DFA Central Area Council, testified in support of Proposal 2. The witness testified that milk produced far from the marketing area, such as Idaho, cannot regularly service the UMW market while still returning a profit to those dairy farmers. The witness was of the opinion that the UMW order should be modified to ensure that producer milk receiving the UMW blend price is actually serving the UMW market.

A witness appearing on behalf of Dean testified in opposition to Proposals 1 and 2. Dean owns and operates distributing plants regulated by the UMW order as well as UMW nonpool plants. The witness explained that Dean opposed the proposals because of the limitation on the transportation credit to 400 miles. Dean's post-hearing brief maintained its opposition to Proposal 1 stating that the proponents only want to address the problem of distant milk, not the issue of depooling. Furthermore, Dean's brief stressed its opposition to Proposal 2, insisting that it is a compromise position among the proponents and does not go far enough to ensure that all milk pooled on the order is consistently servicing the order's Class I market.

A Dean witness also testified in support of Proposal 6. The witness said the proposal would increase the current one time 1-day touch-base provision to 2 days in each of the months of July through November and if that standard was not met, the producer must deliver 2 days milk production in each of the months of December through June. Furthermore, the witness said that Proposal 6 also would establish a 2-day touch-base provision for a dairy farmer who lost producer status with the UMW order, except as a result of loss of Grade A status for less than 21 days, or who became a dairy farmer for other markets. The Dean witness asserted that increasing the touch-base standard to 2 days would ensure that more milk would be consistently available at pool plants to serve the fluid market. A second Dean witness also testified in support of Proposal 6. The witness asserted that the intent of the Federal order system is to ensure a sufficient supply of milk for fluid use and provide for uniform payments to producers who stand ready, willing, and able to serve the fluid market, regardless of how the milk of any individual is utilized. While some entities are of the opinion that the order system should ensure a sufficient milk supply to all plants, the Dean witness was of the opinion that the order system addresses only the need for ensuring a milk supply to distributing plants. The witness elaborated on this opinion by citing examples of order language that stress providing for a regular supply of milk to distributing plants as a priority of the Federal milk order program.

The Dean witness testified that for the Federal milk order system to ensure orderly marketing, orders need to provide adequate economic incentives that will attract milk to fluid plants and need to properly define regulations to determine the milk of those producers who can participate in the marketwide pool. The witness further opined that features are missing from the terms of the UMW order. In this regard, the witness said current pooling standards have allowed milk to become pooled on the order without demonstrating regular service to the Class I needs of the market.

Dean explained further in their post-hearing brief that when distant milk attaches to the UMW pool and dilutes the blend price, Class I handlers have to increase their premiums in an effort to offset the negative PPD so that they can retain their producers. This, argued Dean, results in inconsistent product costs between handlers. In conclusion, the Dean brief stressed that Proposal 6 does not establish different standards for in-area and out-of-area milk. Rather, the brief explained, it ensures that all milk will demonstrate regular and consistent service to the fluid market as a criterion for being pooled on the UMW order.

Exceptions to the tentative partial decision received from Dean expressed support for the adoption of pooling requirements that result in actual fluid milk deliveries to fluid milk plants.

A witness appearing on behalf of AMPI, et al., testified in opposition to Proposal 6. According to the witness, the 2-day touch base provision contained in Proposal 6 would only result in additional and unwarranted expense to UMW producers and promote the uneconomic movement of milk for the sole purpose of meeting an unneeded standard. Furthermore, the witness asserted, in a low Class I utilization order like the UMW, a 2-day touch-base standard is unreasonable.

The AMPI, et al., witness also testified that much of AMPI's Grade A milk is commingled with Grade B milk when it is picked up from the farm. Proposal 6 would require AMPI to pick up their Grade A and Grade B milk separately, explained the witness, and thus would be extremely costly and inefficient. The witness was of the opinion that the current order's one-time touch-base provision is sufficient for ensuring an adequate supply of milk for fluid use. Additionally, the witness said that the Market Administrator already has the authority to adjust supply plant shipping standards in the event that distributing plants have difficulty in obtaining adequate milk supplies to meet the market's Class I demands.

A post-hearing brief submitted by AMPI, et al., reiterated their opposition to Proposal 6. The brief contended that if Proposal 6 were adopted, select handlers would face increased handling and transportation costs to meet the new performance standard. The brief further argued that Proposal 6 would necessitate that supply plants invest more capital to build additional silo capacity used only to accommodate the increased volumes of producer milk needing to touch base.

A witness appearing on behalf of Wisconsin Cheesemakers Association (WCMA), also testified in opposition to Proposal 6. WCMA represents a group of dairy manufacturers and marketers in Wisconsin. According to the witness, 32 of WCMA's members operate 42 dairy facilities pooled on the UMW order. The witness was of the opinion that the implementation of Proposal 6 would not result in orderly marketing within the

UMW order because the 2-day touch-base standard would cause uneconomic and inefficient shipments of milk solely for the purpose of meeting the new higher standard. Furthermore, the witness said the additional milk needed to be shipped to a pool supply plant would necessitate that additional silo capacity be built at plants to receive the additional milk volumes arising from establishing a higher touch-base standard.

A witness appearing on behalf of the National Family Farm Coalition, an organization which represents family farms located in 32 states, including those states comprising the UMW marketing area, testified in opposition to all proposals at the hearing. The witness was of the opinion that the entire Federal order system was in need of complete reform. The witness asserted that proponents of the proposals being heard were entities whose actions have lowered prices received by family farmers.

A post-hearing brief submitted by Alto Dairy (Alto), a cooperative with 580 members in Wisconsin and Michigan, expressed their opposition to Proposals 1, 2, and 6. The brief argued that the pooling of milk located far from the marketing area serves to equalize the blend prices between Federal orders and contended that a ban on such pooling in the UWM order would lead to similar bans in other Federal orders. The brief concluded that this would widen blend price differences among all Federal orders.

A brief submitted on behalf of Family Dairies USA (Family Dairies), expressed their opposition to Proposals 1, 2, and 6. Family Dairies is a cooperative handler regulated by the UMW order that operates a pool supply plant located in the marketing area. The brief expressed the opinion that these proposals essentially establish performance standards for out-of-area milk that are different from performance standards for in-area milk. The brief contended that establishing different standards based on location is discriminatory, is designed to erect trade barriers to distant milk, and is illegal. In their brief they argued that producers who bear large transportation costs to supply the fluid market, in effect, are not receiving uniform prices. In this regard, the brief asserted that Proposals 1, 2, and 6 violated uniform producer prices because of the transportation cost burden on distant producers.

Exceptions to the tentative partial decision from Grande Cheese Company (Grande) noted that the States of Indiana, Ohio and the southern peninsula of Michigan should be added to the states to which pooled milk may be diverted.

In exceptions to the tentative partial decision, Lamers Dairy, Inc. argued that the decision is a step in the right direction but does not go far enough in preventing disorderly marketing. Lamers was of the view that the order permits the pooling of far more milk on the order than that which could be considered a legitimate reserve supply of distributing plants. Supply plants which meet the performance standards of the order necessarily qualify all of the receipts of the supply plant for pooling. Accordingly, all of the receipts, including diversions of the supply plant, can reasonably be considered a legitimate reserve supply of those distributing plants.

2. Transportation Credits

Two proposals seeking an identical mileage limit for handlers receiving transportation credits for moving milk for Class I uses were adopted in the tentative partial decision and are adopted permanently in this final partial decision. While no handler is currently receiving a transportation credit for milk transported distances greater than 400 miles, the proposed 400-mile limit is reasonable to ensure that milk used in fluid products will be acquired from sources nearest to the distributing plants. Specifically, a transportation credit for milk delivered to distributing plants on the first 400 miles between the transferring and receiving plant was adopted in the tentative partial decision and is thereby adopted in this final partial decision on a permanent basis.

Currently, the UMW order provides for a transportation credit on bulk milk transferred from a pool plant to a pool distributing plant. The transportation credit is calculated by multiplying $0.0028 times the number of miles between the transferring plant and the receiving plant and is applied on a per hundredweight basis. An adjustment is made for the different Class I prices between the transferring and receiving plants. The transportation credit is paid to the receiving distributing plant to partially offset the cost of transporting milk.

A witness appearing on behalf of AMPI, *et al.*, testified in support of the transportation credit limit contained in Proposal 1. The witness said that in 2003 no pooled milk received a transportation credit that was transported over 400 miles. The AMPI, *et al.*, witness also testified that very little milk which did receive a transportation credit was shipped between 300 and 399 miles to the receiving distributing plant. The witness stressed that limiting the transportation credit to 400 miles would not disadvantage any handler currently delivering milk to a distributing plant.

A witness appearing on behalf of Mid-West, *et al.*, testified in support of the transportation credit limit contained in Proposal 2. The witness was of the opinion that milk located within the marketing area is more than adequate to supply the order's distributing plants. The witness said that adopting the proposed limit of 400 miles would not affect any current pool handlers receiving the credit. However, noted the witness, a mileage limit on the transportation credit would prevent any new supply plants that were located great distances from distributing plants from draining money from the producer settlement fund (PSF) in the future.

A brief submitted on behalf of Mid-West, *et al.*, maintained their position that placing a mileage limitation on receiving a transportation credit would avoid the potential of the UMW pool subsidizing the delivery of milk to UMW distributing plants from unneeded areas.

The witness appearing on behalf of LOL also expressed their support for establishing a transportation credit limit.

A witness appearing on behalf of Dean testified in opposition to limiting receipt of the transportation credit. The witness was of the opinion that the purpose of limiting receipt of the transportation credit was only to prevent distant milk from pooling on the UMW order. If milk is needed to supply distributing plants, the witness argued, then it should be pooled without regard to the distance it needs to be transported.

Exceptions to the tentative partial decision from Grande expressed opposition to limiting the transportation credit to 400 miles. They stated that such a limitation would create geographical barriers to dairy farmers seeking to sell milk to UMW distributing plants.

The record of this proceeding finds that several amendments to the pooling standards of the UMW order should be adopted on a permanent basis to more properly identify the milk of those producers that should share in the order's marketwide pool proceeds. Currently, milk located far from the UMW marketing area that demonstrates no consistent service to the Class I needs of the market is able to qualify for pooling on the UMW order. The addition of this milk to the order at lower classified use-values results in a

lower blend price returned to those producers who consistently supply the Class I needs of the UMW market. Such milk does not demonstrate a reasonable level of performance in servicing the Class I milk needs of the UMW marketing area and therefore should not be pooled.

The pooling standards of all Federal milk marketing orders, including the UMW order, are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and to provide the criteria for identifying the milk of those producers who are reasonably associated with the market as a condition for receiving the order's blend price. The pooling standards of the UMW order are represented in the *Pool Plant, Producer,* and the *Producer milk* provisions of the order and are performance based. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is available to meet the Class I needs of the market and provide the criteria for determining the producer milk that has demonstrated service to the Class I market and thereby should share in the marketwide distribution of pool proceeds.

Pooling standards that are performance based provide the only viable method for determining those eligible to share in the marketwide pool. It is primarily the additional revenue generated from the higher-valued Class I use of milk that adds additional income, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the returns arising from higher-valued Class I sales so that costs can be recovered.

Pooling standards are needed to identify the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns to those producers who actually incur the costs of servicing and supplying the fluid needs of the market.

Pool plant standards, specifically standards that provide for the pooling of milk through supply plants, need to reflect the supply and demand conditions of the marketing area. This is important because producers whose milk is pooled on the order, regardless of utilization, receive the order's blend price. When a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that cannot reasonably be considered as serving the fluid needs of the market, it is appropriate to re-examine the standard in light of current marketing conditions.

Unlike other consolidated orders established as a part of Federal milk order reform on the basis of the area in which Class I handlers compete with each other for the majority of their sales, the current consolidated UMW marketing area also was based primarily on a common procurement area. In this regard, it would be unreasonable to conclude that areas far from the UMW area, such as Idaho, are part of a common procurement area with those states that comprise the current UMW marketing area. The same is true for the states of Indiana, Ohio and the southern peninsula of Michigan. While it is the Class I use of milk by regulated handlers in the marketing area that provides additional revenue to the pool and not the procurement area, the procurement area was nevertheless envisioned to be the primary area relied upon by the order's distributing plants for a supply of milk.

The geographic boundaries of the UMW order were not intended to limit or define which producers, which milk of those producers, or which handlers could enjoy the benefits of being pooled on the order. What is important and fundamental to all Federal orders, including the UMW order, is the proper identification of those producers and the milk of those producers that should share in the proceeds arising from Class I sales. The UMW order's current pooling standards do not reasonably accomplish this.

The hearing record clearly indicates that the milk of producers located in areas distant from the marketing area is pooled on and receives the UMW order's blend price. Current inadequate supply plant performance standards enable milk which has de minimis physical association with the market and which demonstrates no consistent service to the market's Class I needs to be pooled on the UMW order. The inappropriate pooling of milk occurs because the order has inadequate diversion provisions that allow for milk to be diverted to a manufacturing plant located far from the marketing area. The ability for such milk to pool on the UMW order is made possible by distant handlers working out an arrangement with pooled handlers located within the UMW to pool the milk of the distant handler, often for a fee. The milk is included as part of the total receipts of the pooled handler even though such milk is diverted to plants located far from the marketing area.

Requiring milk originating outside of the 7-state milkshed to qualify for pooling separately by delivering milk to a UMW distributing plant or distributing plant unit is not needed to ensure that such milk is actually servicing the Class I needs of the market. The adopted changes of limiting diversions to plants physically located within the 7-state milkshed in conjunction with not permitting handlers to use in-area milk to qualify milk located outside the 7-state milkshed essentially accomplishes the intent of ensuring the proper identification of milk that services the Class I needs of the market. In their exceptions to the tentative decision, Mid-West, *et al.,* continued to endorse qualifying milk for pooling separately by delivering milk to a UMW distributing plant or distributing plant unit. This final partial decision maintains the conclusion that such a measure is not needed for the same reasons cited above.

Some entities on brief argued that requiring out-of-area milk to perform separately is a form of location discrimination and is a means of erecting trade barriers. This argument is without merit. Pooling standards for plants located outside the 7-state milkshed will not prohibit milk from being pooled if it meets the UMW's order pooling standards. The amended pooling provisions provide identical pooling standards to both in-area and out-of-area supply plants, as both must ship 10 percent to the Class I market. Nevertheless, for the reasons stated above, other changes to the pooling standards negate the need to provide for separate pooling standards for out-of-area milk.

The Federal milk order system has consistently recognized that there is a cost incurred by producers in servicing an order's Class I market, and the primary reward to producers for performing such service is receiving the order's blend price. The amended pooling provisions will ensure that milk seeking to be pooled and receive the order's blend price is consistently servicing the order's Class I needs. Consequently, the adopted pooling provisions will ensure the more equitable sharing of revenue generated from Class I sales among producers who bear the costs.

Changes to the order's diversion provisions are needed to ensure that milk pooled on the order not used for Class I purposes is part of the legitimate reserve supply of Class I handlers. Providing for the diversion of milk is a desirable and needed feature of an order because it facilitates the orderly and

efficient disposition of milk when not needed for fluid use. However, it is necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process. Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers who service the market's Class I needs. Without reasonable diversion provisions, the order's performance standards are weakened and give rise to disorderly marketing conditions.

The hearing record clearly indicates that milk located far from the marketing area can be reported as diverted milk by a pooled handler and receive the order's blend price. Under the current pooling provisions, this can occur after a one-time delivery to a UMW pool plant. After the initial delivery, such milk need never again be delivered to a UMW pool plant. The record evidence confirms that usually this milk is delivered to a nonpool plant located as far from the marketing area as the diverted milk. This milk is never again physically associated with a plant in the marketing area, nor does it serve the Class I needs of the market.

Despite the comments by Grande, it is appropriate to permanently amend the order's diversion provisions so that diversions can be made only to plants physically located within the 7-state milkshed. Milk diverted to such plants better ensures that this milk is a legitimate reserve supply of the diverting handler and is readily available to service the Class I market when needed.

The Agricultural Marketing Agreement Act of 1937 (the Act) was amended by the Food Security Act of 1985 to provide authority for the establishment of marketwide service payments. Under the Act, as amended, marketwide service payments can be established to partially reimburse handlers for services provided of marketwide benefit by using money out of the PSF before a blend price is computed.

Class I sales add additional revenue to the marketwide pool, so ensuring an adequate supply of milk to distributing plants benefits, in general, all market participants. Consequently, a transportation credit was established in the pre-reform Chicago Regional order to reimburse a portion of the cost of transporting milk to a distributing plant for use in Class I products. The transportation credit provision was carried into the consolidated UMW order as part of Federal order reform.

Transportation credits in the current UMW order assist plants in obtaining a milk supply to fulfill Class I demand and promote the orderly marketing of milk. However, it is important that the transportation credit provision not be used as a method of circumventing the intent of other performance-based pooling standards. Establishing a mileage limit on the transportation credit will encourage distributing plants to use milk located in the nearby procurement area. The UMW has an abundance of milk within the marketing area beyond Class I demands and there should be no incentive given to attract milk for Class I use beyond that available within 400 miles of a distributing plant, a reasonable proxy for describing the common procurement area of the order's distributing plants. A handler may acquire a milk supply from far distances; however, the transportation credit would apply only to the first 400 miles of milk movement.

Evidence presented at the hearing, despite the comments by Grande, revealed that currently no distributing plant is receiving a transportation credit for milk located farther than 400 miles from their plant. Therefore, the adopted amendment should not alter any current UMW handler's business practices. The ability of handlers to use the transportation credit as a means of having milk that is not part of the procurement area meet the performance standards of the order will be limited. This limitation is consistent with the UMW order boundaries that were established based, in part, on the commonality of a milk procurement area. This is consistent with other changes adopted in this decision that stress meeting performance-based standards as a condition for receiving the order's blend price.

A proposal seeking to increase the order's touch-base standard as a means of ensuring that the Class I needs of the market are met is not adopted. While the touch-base standard is an important feature of an order's pooling standards, increasing the standard is not appropriate given the marketing conditions of the UMW marketing area. The UMW marketing area has an abundance of milk located within the marketing area and as a result, it's Class I utilization is relatively low. For example, during 2003, the order's Class I utilization averaged 24.2 percent. Increasing the touch-base standard is unwarranted because it would likely cause the uneconomic movement of milk for the sole purpose of meeting a higher standard.

3. Determination of Emergency Marketing Conditions

Record evidence established that pooling standards of the UMW order were inadequate and were resulting in the erosion of the blend price received by producers who were serving the Class I needs of the market and were changed on an emergency basis. The unwarranted erosion of such producer blend prices stemmed from improper supply plant standards and the lack of appropriate limits on diversions of milk to only plants located within the 7-state milkshed.

It was also appropriate to establish a mileage limit on the transportation credit on an emergency basis to prevent the credit from being used to circumvent the amended pooling provisions contained in the interim decision regarding supply plant performance standards and diverted milk. Establishing a mileage limit ensured that other changes made to ensure consistent performance to the Class I market before milk was eligible to be pooled and receive the order's blend price were not weakened.

Consequently, it was determined that emergency marketing conditions existed in the Upper Midwest marketing area and the issuance of a recommended decision was omitted. As stated in the tentative partial decision, a separate decision will be issued addressing proposals concerning pooling and repooling of milk, temporary loss of Grade A status and increasing the maximum administrative assessment.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof is one document: A Marketing Agreement regulating the handling of milk. The order amending the order regulating the handling of milk in the Upper Midwest marketing area was approved by producers and published in the **Federal Register** on June 1, 2005 (70 FR 31321), as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

March 2005 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Final Rule published in the **Federal Register** on June 1, 2005 (70 FR 31321), regulating the handling of milk in the Upper Midwest marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended) who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1030

Milk Marketing order.

Dated: September 29, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Upper Midwest Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act:

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the interim amendment of the order issued by the Administrator, Agricultural Marketing Service, on May 26, 2005, and published in the **Federal Register** on June 1, 2005 (70 FR 31321), are adopted without change and shall be and are the terms and provisions of this order.

[This marketing agreement will not appear in the Code of Federal Regulations]

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1030.1 to 1030.86 all inclusive, of the order regulating the handling of milk in the Upper Midwest marketing area (7 CFR part 1030) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of March 2005,_____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature By (Name)

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 05–20017 Filed 10–4–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–01–06]

Amendment to the Beef Promotion and Research Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 (Act) to reduce assessment levels for imported beef and beef products based on revised determinations of live animal equivalencies and to update and expand the Harmonized Tariff System numbers and categories, which identify imported live cattle, beef, and beef products to conform with recent updates in the numbers and categories used by the U.S. Customs and Border Protection (USCBP).

DATES: Written comments regarding changes to this proposed rule must be received by December 5, 2005.

ADDRESSES: Send any written comments to Kenneth R. Payne, Chief; Marketing Programs Branch, Room 2638–S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Comments may be sent by facsimile to 202/720–1125 and by electronic mail to *BeefComments@usda.gov* or *www.regulations.gov.* State that your comments refer to Docket No. LS–01–06. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, or on the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-beef.htm.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720–1115, fax 202/720–1125, or by e-mail at *Kenneth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administration has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The effect of the Order upon small entities was discussed in the July 18, 1986 **Federal Register** [51 FR 26132]. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

There are approximately 270 importers who import beef or edible beef products into the United States and 198 importers who import live cattle into the United States. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural businesses as those with annual receipts of less than $5 million.

The proposed rule imposes no significant burden on the industry. It would merely update and expand the HTS numbers and categories to conform to recent updates in the numbers and categories used by USCBP. This proposed rule also adjusts the live animal equivalencies used to determine the amount of assessments collected on imported beef and beef products. This adjustment reflects an increase in the average dressed weight of cows slaughtered under Federal inspection that has occurred since the inception of the Beef Checkoff Program. Total import assessments collected under the Beef Checkoff Program in 2004 were $8,322,145 including both live cattle and beef and beef products. The Department estimates that the proposed adjustment for 2005 could result in a decrease in importer assessment of approximately $800,000. Accordingly, the Administrator of AMS has determined that this action will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and Rules and Regulations have previously been approved by OMB under OMB control number 0581–0202 and merged into OMB control number 0581–0093.

Background and Proposed Change

The Act authorized the establishment of a national beef promotion and research program. The final Order was published in the **Federal Register** on July 18, 1986, (51 FR 21632) and the collection of assessments began on October 1, 1986. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board) appointed by the Secretary of Agriculture (Secretary) from industry nominations composed of 104 cattle producers and importers. The program is funded by a $1-per-head assessment on producer marketing of cattle in the United States and on imported cattle as well as an equivalent amount on imported beef and beef products.

Importers pay assessments on imported cattle, beef, and beef products. USCBP collects and remits the assessment to the Board. The term ''importer'' is defined as ''any person who imports cattle, beef, or beef products from outside the United States.'' Imported beef or beef products is defined as ''products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following

numbers in the Tariff Schedule of the United States.''

In 1989, USCBP implemented a new numbering system, the Harmonized Tariff Schedule (HTS), to replace the Tariff Schedule of the United States (TSUS) system. The Department updated the TSUS to HTS, in a final rule, published in the **Federal Register** on April 20, 1989, (54 FR 15915) to conform with updates made by USCBP. Since the inception of HTS, it has undergone many changes. First, the original 11 digit system has been replaced with a 10 digit system. Additionally, most of the categories regarding imported beef and beef products have been subdivided and the new categories have been assigned HTS numbers. One of the purposes of this proposed rule is to update, expand, and revise the table found under § 1260.172 (7 CFR § 1260.172) to reflect the current HTS numbers.

As a result of these changes to HTS, there are 20 new categories that cover imported live cattle subject to assessment compared with the previous 8 categories. The 30 categories identifying imported beef and beef products have been expanded to 54 categories. The chart, as published in the April 20, 1989, **Federal Register** final rule [54 FR 15918], is as follows:

IMPORTED LIVE CATTLE

	Live bovine animals:
	Purebred breeding animals
	Dairy:
0102.10.00103	Male
0102.10.00201	Female
	Other:
0102.10.00309	Male
0102.10.00504	Female
	Other:
0102.90.20004	Cows imported specially for dairy purposes
	Other:
0102.90.40206	Weighing less than 90 kg each
0102.90.40402	Weighing 90 kg or more but less than 320 kg each
0102.90.40607	Weighing 320 kg or more each

IMPORTED BEEF AND BEEF PRODUCTS

	Meat of bovine animals, fresh or chilled:
	Carcasses and half-carcasses:
0201.10.00103	Veal
0201.10.00906	Other:
	Other cuts with bone-in:
	Processed:
0201.20.20009	High-quality beef Cuts
0201.20.40005	Other:
0201.20.60000	Other:
	Boneless:
	Processed:
0201.30.20007	High-quality beef cuts
0201.30.40003	Other:
0201.30.60008	Other:
	Meat of bovine animals, frozen:
	Carcasses and half-carcasses:
0202.10.00102	Veal
0202.10.00905	Other
	Other cuts with bone in:
	Processed:
0202.20.20008	High-quality beef cuts
0202.20.40004	Other
0202.20.60009	Other
	Boneless:
	Processed:
0202.30.20006	High-quality beef cuts
0202.30.40002	Other
0202.30.60007	Other
	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:
0206.10.00000	Of bovine animals, fresh or chilled
	Of bovine animals, frozen:
0206.21.00007	Tongues
0206.22.00006	Livers
0206.29.00009	Other
	Meat and edible meat offal, salted, in brine, dried or smoked: edible flours and meals of meat or meat offal:
0210.20.00002	Meat of bovine animals
	Sausages and similar products, of meat, meat offal or blood; food preparation based on these products:
	Other:
1601.00.40003	Beef in airtight containers:
	Other:
1601.00.60204	Beef
	Other prepared or preserved meat, meat offal or blood:

IMPORTED BEEF AND BEEF PRODUCTS—Continued

	Of bovine animals:
1602.50.05004	Offal
	Other:
	Not containing cereals or vegetables:
1602.50.09000	Cured or pickled
	Other:
	In airtight containers:
	Corned Beef
	In containers holding less than 1kg
1602.50.10203	Other
1602.50.10409	Other:
1602.50.20201	In containers holding less than 1kg
1602.50.20407	Other
1602.50.60006	Other

This rule proposes to update and expand the chart published in the 1989 final rule to conform with recent changes to the HTS numbering system and revises the live weight equivalents used to calculate import assessments. Importers are currently paying the same assessment level for imported beef and beef products that was established when the Order was first published in 1986. At that time, the average dressed weight of cows slaughtered under Federal inspection was determined to be 509 pounds. The Department determined that using the average dressed weight of domestic cows slaughtered under Federal inspection would be most suitable because about 90 percent of imported beef and beef products were similar to domestic cow beef.

The Act requires that assessments on imported beef and beef products be determined by converting such imports into live animal equivalents to ascertain the corresponding number of head of cattle. Carcass weight is the principle factor in calculating live animal equivalents. Under the Order the Board may increase or decrease the level of assessments for imported beef and beef products based upon revised determination of live animal equivalencies.

The trend in cattle weight has been increasing. This is attributed to many factors such as genetic improvements, more refined feeding programs, better animal health, and better overall management. The weight of cattle will more than likely increase or hold steady. At the time the Order was published, the average dressed weight of cows slaughtered under Federal inspection in 1985 was 509 pounds compared to an average of 614 pounds for calendar year 2004.

The Department has received two recommendations concerning importer assessments. The Meat Importers Council of America (MICA) requested to increase the live animal equivalency rate that would reduce the amount of assessments collected from importers of beef and beef products. MICA suggests using the dressed cow weight for calendar year 2000 to recalculate levels of assessments. This average would be 579 pounds. In updating the average dressed cow weight for calendar year 2004, the average would be 614 pounds. The Board has recommended using an average dressed cow weight from 1987 to the most current data. The Board states that ''establishing an average over this period of time takes into account short term highs and lows due to the cattle cycle, weather effects, and feed prices.'' This average would be 555 pounds.

After consideration of both recommendations, the Department has concluded that it is preferable to calculate the average using the past 5-year average dressed weight of all cows slaughtered in the U.S. under Federal inspection.

There is not a consistent calculation method among the various countries regarding average carcass weights of cattle slaughtered for export, the Department proposes that the average carcass weight, which will be used in calculating the live animal equivalents, will be the 5-year average (2000, 2001, 2002, 2003, and 2004) carcass weight of cows slaughtered in the United States. The average carcass weight of domestic cattle is not subject to variations in carcass weights resulting from possible differing methods of calculation in any of the exporting countries. Historically, since the majority of cattle are imported from Canada and Mexico and the majority of beef and beef products are imported from Canada, Australia, and New Zealand, the average U.S. dressed cow weight would be the most suitable because of the similarity of domestic cow beef and beef products from these exporting countries.

Additionally, an average over this period of time achieves the goal of reflecting current genetics, production practices, and technology while also reflecting normal marketing conditions. A shorter time period, such as the most recent year, is subject to unusual marketing conditions. For example, severe drought or a sudden dip in milk prices may lead to a substantial shift in the normal marketing patterns for cull beef and dairy cows. A longer period, such as 10 or 15 years, does not achieve the goal of reflecting changes in animal genetics and industry production practices.

Accordingly, the Department has determined that the most recent 5-year weighted average balances the need to adjust for current genetics and technology while minimizing the influence of atypical marketing conditions on the average carcass weights of cows coming to slaughter. The 5-year weighted average would be 592 pounds.

Further, the Department has used standard conversion factors for determining the amount of a particular type of beef or beef product represents a carcass. These conversions factors take into account the removal of bone, weight lost in cooking or other processing, and the non-beef components of beef products. The conversion factors have been utilized to determine the rate of assessment charged to importers. The rate of assessment is calculated by dividing the conversion factor by the average carcass weight and multiplying the result by the $1-per-head assessment rate. The current rates being assessed by USCBP, as well as the most current HTS numbers, are as follows:

HTS No.	Imported live cattle	Assessment rate
	Live bovine animals:	
	Purebred breeding animals:	
	Dairy:	
0102.10.0010	Male	$1.00/head.
0102.10.0020	Female	1.00/head.
	Other:	
0102.10.0030	Male	1.00/head.
0102.10.0050	Female	1.00/head.
	Other:	
	Cows imported specially for dairy purposes:	
0102.90.2011	Weighing less than 90 kg each	1.00/head.
0102.90.2012	Weighing 90 kg or more	1.00/head.
	Other:	
	Weighing less than 90 kg each:	
0102.90.4024	Male	1.00/head.
0102.90.4028	Female	1.00/head.
	Weighing 90 kg or more but less than 200 kg each:	
0102.90.4034	Male	1.00/head.
0102.90.4038	Female	1.00/head.
	Weighing 200kg or more but less than 320 kg each:	
0102.90.4054	Male	1.00/head.
0102.90.4058	Female	1.00/head.
	Weighing 320 kg or more each:	
	For immediate slaughter:	
0102.90.4062	Steers	1.00/head.
0102.90.4064	Bulls	1.00/head.
0102.90.4066	Cows	1.00/head.
0102.90.4068	Heifers	1.00/head.
	For breeding:	
0102.90.4072	Male	1.00/head.
0102.90.4074	Female	1.00/head.
	Other:	
0102.90.4082	Male	1.00/head.
0102.90.4084	Female	1.00/head.

HTS No.	Imported beef and beef products	Assessment rate per kg.
	Meat of bovine animals, fresh or chilled:	
	Carcasses and half-carcasses:	
0201.10.0510	Veal	.01697542
0201.10.0590	Other	.00440920
0201.10.1010	Veal	.01697542
0201.10.1090	Other	.00440920
	Other:	
0201.10.5010	Veal	.01697542
0201.10.5090	Other	.00595242
	Other cuts with bone in:	
	Processed:	
0201.20.0200	High-quality beef cuts	.00617288
0201.20.0400	Other	.00595242
0201.20.0600	Other	.00440920
	Processed:	
0201.20.1000	High-quality beef cuts	.00617288
0201.20.3000	Other	.00595242
0201.20.5000	Other	.00440920
	Other.	
0201.20.8090	Other	.00440920
	Boneless:	
	Processed:	
0201.30.0200	High-quality beef cuts	.00617288
0201.30.0400	Other	.00595242
0201.30.0600	Other	.00440920
	Processed:	
0201.30.1000	High-quality beef cuts	.00617288
0201.30.3000	Other	.00595242
0201.30.5000	Other	.00595242
	Other:	
0201.30.8090	Other	.00595242
	Meat of bovine animals, frozen:	
	Carcasses and half-carcasses:	
0202.10.5010	Veal	.01697542
0202.10.5090	Other	.00440920

HTS No.	Imported beef and beef products	Assessment rate per kg.
0202.10.1010	Veal	.01697542
0202.10.1090	Other	.00440920
	Other:	
0202.10.5010	Veal	.01697542
0202.10.5090	Other	.00440920
	Other cuts with bone in:	
	Processed:	
0202.20.0200	High-quality beef cuts	.00617288
0202.20.0400	Other	.00595242
0202.20.0600	Other	.00440920
	Processed:	
0202.20.1000	High-quality beef cuts	.00617288
0202.20.3000	Other	.00595242
0202.20.5000	Other	.00440920
0202.20.8000	Other	.00440920
	Boneless:	
	Processed:	
0202.30.0200	High-quality beef cuts	.00617288
0202.30.0400	Other	.00595242
0202.30.0600	Other	.00595242
	Processed:	
0202.30.1000	High-quality beef cuts	.00617288
0202.30.3000	Other	.00595242
0202.30.5000	Other	.00595242
0202.30.8000	Other	.00440920
	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen:	
0206.10.0000	Of bovine animals, fresh or chilled	.00440920
	Of bovine animals, frozen:	
0206.21.0000	Tongues	.00440920
0206.22.0000	Livers	.00440920
0206.29.0000	Other	.00440920
	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:	
0210.20.0000	Meat of bovine animals	.00716100
	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:	
	Other:	
	Beef in airtight containers.	
1601.00.4010	Canned	.00551150
1601.00.4090	Other	.00551150
	Other:	
1601.00.6020	Beef	.00551150
	Other prepared or preserved meat, meat offal or blood:	
	Of bovine animals:	
	Offal.	
	Other:	
	Not containing cereals or vegetables:	
1602.50.0900	Cured or pickled	.0771610
	Other:	
	In airtight containers:.	
	Corned Beef.	
1602.50.1020	In containers holding less than 1 kg	.00771610
1602.50.1040	Other	.00771610
	Other:	
1602.50.2020	In containers holding less than 1 kg	.00815702
1602.50.2040	Other	.00815702
1602.50.6000	Other	.00837748

The proposed assessment rates for imported beef and beef products are set forth in the regulatory text of § 1260.172. In 2004, importers' contribution to the program totaled $8,322,145 including both live cattle and beef and beef products. The Department estimates that the proposed adjustment for 2005 could results in a decrease in importer assessment of approximately $800,000.

A 60-day comment period is provided for interested persons to comment.

List of Subjects in 7 CFR part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, beef, and beef products.

For the reasons set forth in the preamble, it is proposed that title 7 of the CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation of part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911.

2. Paragraph (b)(2) of § 1260.172 is revised to read as follows:

§ 1260.172 Assessments.

* * * * *

(b) * * *

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

IMPORTED LIVE CATTLE

HTS No.	Assessment rate
0102.10.0010	$1.00/head.
0102.10.0020	$1.00/head.
0102.10.0030	$1.00/head.
0102.10.0050	$1.00/head.
0102.90.2011	$1.00/head.
0102.90.2012	$1.00/head.
0102.90.4024	$1.00/head.
0102.90.4028	$1.00/head.
0102.90.4034	$1.00/head.
0102.90.4038	$1.00/head.
0102.90.4054	$1.00/head.
0102.90.4058	$1.00/head.
0102.90.4062	$1.00/head.
0102.90.4064	$1.00/head.
0102.90.4066	$1.00/head.
0102.90.4068	$1.00/head.
0102.90.4072	$1.00/head.
0102.90.4074	$1.00/head.
0102.90.4082	$1.00/head.
0102.90.4084	$1.00/head.

IMPORTED BEEF AND BEEF PRODUCTS

HTS No.	Assessment rate per kg
0201.10.0510	.01487175
0201.10.0590	.00386279
0201.10.1010	.01487175
0201.10.1090	.00386279
0201.10.5010	.01487175
0201.10.5090	.00521477
0201.20.0200	.00540791
0201.20.0400	.00521477
0201.20.0600	.00386279
0201.20.1000	.00540791
0201.20.3000	.00521477
0201.20.5000	.00386279
0201.20.8090	.00386279
0201.30.0200	.00540791
0201.30.0400	.00521477
0201.30.0600	.00386279
0201.30.1000	.00540791
0201.30.3000	.00521477
0201.30.5000	.00521477
0201.30.8090	.00521477
0202.10.0510	.01487175
0202.10.0590	.00386279
0202.10.1010	.01487175
0202.10.1090	.00386279
0202.10.5010	.01487175
0202.10.5090	.00386279
0202.20.0200	.00540791
0202.20.0400	.00521477
0202.20.0600	.00386279
0202.20.1000	.00540791
0202.20.3000	.00521477
0202.20.5000	.00386279
0202.20.8000	.00386279
0202.30.0200	.00540791

IMPORTED BEEF AND BEEF PRODUCTS—Continued

HTS No.	Assessment rate per kg
0202.30.0400	.00521477
0202.30.0600	.00527837
0202.30.1000	.00540791
0202.30.3000	.00521477
0202.30.5000	.00521477
0202.30.8000	.00386279
0206.10.0000	.00386279
0206.21.0000	.00386279
0206.22.0000	.00386279
0206.29.0000	.00386279
0210.20.0000	.00386279
1601.00.4010	.00482849
1601.00.4090	.00482849
1601.00.6020	.00482849
1602.50.0900	.00675989
1602.50.1020	.00675989
1602.50.1040	.00675989
1602.50.2020	.00714617
1602.50.2040	.00714617
1602.50.6000	.00733931

* * * * *

Dated: September 29, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–20016 Filed 10–4–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20803; Directorate Identifier 2005–CE–19–AD]

RIN 2120–AA64

Airworthiness Directives; BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH & CO KG Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G103C Twin III SL Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2004–08–13, which applies to certain BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH & CO KG (Grob) Models G103 TWIN ASTIR, G103 TWIN II, G103 TWIN III ACRO, and G103C Twin III SL sailplanes. AD 2004–08–13 currently requires you to replace the center of gravity (CG) release hook attachment brackets with brackets of improved design. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. This proposed AD would retain all the actions required in AD 2004–08–13 and add Model G103A TWIN II ACRO sailplanes to the applicability. The actions specified by this proposed AD are to prevent abnormal or uncontrolled sailplane release due to cracked CG release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

DATES: We must receive any comments on this proposed AD by November 9, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. The docket number is FAA–2005–20803; Directorate Identifier 2005–CE–19–AD.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–20803; Directorate Identifier 2005–CE–19–AD'' at the

beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–20803; Directorate Identifier 2005–CE–19–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains this proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Has FAA taken any action to this point? Reports of cracks found in the center of gravity (CG) release hook attachment brackets caused us to issue AD 2004–08–13, Amendment 39–13582 (69 FR 21402, April 21, 2004). AD 2004–08–13 applies to Grob Models G103 TWIN ASTIR, G103 TWIN II, G103 TWIN III ACRO, and G103C Twin III SL sailplanes. That AD currently requires you to replace the center of gravity (CG) release hook attachment brackets with brackets of improved design.

What has happened since AD 2004–08–13 to initiate this proposed action? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified FAA of the need to change AD 2004–08–13. The LBA reports that the actions required in AD 2004–08–13 should also apply to Model G103A TWIN II ACRO sailplanes.

What is the potential impact if FAA took no action? A cracked CG release hook attachment bracket, if not prevented, could lead to abnormal or uncontrolled sailplane release. This condition could result in reduced or loss of sailplane control.

Is there new service information that applies to this subject? Grob has issued Service Bulletin No. MSB315–62/2, dated March 9, 2005.

What are the provisions of this service information? The service bulletin includes procedures for inspecting and replacing the CG release hook attachment brackets for Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes.

What action did the LBA take? The LBA previously classified Grob Service Bulletin No. MSB315–62, dated January 21, 2002, as mandatory and issued German AD No. 2002–067, effective date: March 21, 2002, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These Grob Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G103C Twin III SL sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Grob Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G103C Twin III SL sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent abnormal or uncontrolled sailplane release due to cracked CG release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

What would this proposed AD require? This proposed AD would supersede AD 2004–08–13, Amendment 39–13582 (69 FR 21402, April 21, 2004) with a new AD. This proposed AD would retain the actions exactly and currently required in AD 2008–08–13 actions for Models G103 TWIN ASTIR, G103 TWIN II, G103C TWIN III ACRO, and G103C Twin III SL sailplanes and would add Model G103A TWIN II ACRO sailplanes to the applicability.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 136 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to do this proposed replacement:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130.	$67	$197	$197 × 136 = $26,792.

What is the difference between the cost impact of this proposed AD and the cost impact of AD 2004–08–13? The only difference between the cost impact of AD 2004–08–13 and this proposed AD is the addition of Model G103A TWIN II ACRO sailplanes to the applicability. There is no difference in the cost to do the proposed required actions.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2005–20803; Directorate Identifier 2005–CE–19–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2004–08–13, Amendment 39–13582 (69 FR 21402, April 21, 2004), and by adding a new AD to read as follows:

Burkhardt Grob Luft-Und Raumfahrt GmbH & Co KG: Docket No. FAA–2005–20803; Directorate Identifier 2005–CE–19–AD; supersedes AD 2004–08–13, Amendment 39–13582.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 9, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2004–08–13, Amendment 39–13582.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following model sailplanes, all serial numbers, that are certificated in any category:

MODELS
(1) G103 TWIN ASTIR
(2) G103 TWIN II
(3) G103A TWIN II ACRO
(3) G103C TWIN III ACRO
(4) G 103 C Twin III SL

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions of this AD are intended to prevent abnormal or uncontrolled sailplane release due to cracked center of gravity (CG) release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Replace the CG release hook attachment brackets with improved design brackets, as follows: (i) *For Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes:* install new part number (P/N) 103B–2360.01/1 or 103B—2360.01/2 and P/N 103B–2360.02/1 or 103B–2360–02/2; and (ii) *For Model G103 TWIN ASTIR sailplanes:* install an additional plate, P/N 103–2360.02 below each attachment bracket; and		

Actions	Compliance	Procedures
(iii) *For Model G 103 C Twin III SL sailplanes:* install new P/N 103B–2360.01/2 and P/N 103B–2360.02/2.	For sailplanes previously affected by AD 2004–08–13: Within the next 25 hours time-in-service (TIS) after June 4, 2004 (the effective date of AD 2004–08–13), unless already done. For sailplanes not previously affected by AD 2004–08–13: Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done.	*For Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes:* Follow Grob Service Bulletin No. MSB315–62, dated January 21, 2002, or Grob Service Bulletin No. MSB315–62/2, dated March 9, 2005. *For Model G 103 C Twin III SL sailplanes:* Follow Grob Service Bulletin No. MSB869–22, dated January 22, 2002.
(2) Do not install any CG release hook attachment bracket that is not a part number referenced in paragraphs (e)(1)(i) and (e)(1)(iii) of this AD, as applicable.	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD No. 2002–066, effective date: March 21, 2002; and German AD No. 2002–067, effective date: March 21, 2002, also address the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact BURKHARDT GROB LUFT-UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. This is docket number FAA–2005–20803; Directorate ID 2005–CE–19–AD.

Issued in Kansas City, Missouri, on September 28, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21331; Directorate Identifier 2005–NE–07–AD]

RIN 2120–AA64

Airworthiness Directives; Engine Components Incorporated (ECi) Reciprocating Engine Connecting Rods

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Lycoming Engines (formerly Textron Lycoming) 360 and 540 series reciprocating engines with ECi connecting rods, part number (P/N) AEL 11750, installed. This proposed AD would require replacing certain serial-numbered connecting rods, P/N AEL 11750. This proposed AD would also prohibit installing certain ECi connecting rods, P/N AEL 11750 into any Lycoming 360 or 540 series reciprocating engines. This proposed AD results from reports of connecting rods with excessive variation in circularity of the journal bores. We are proposing this AD to prevent fatigue failure of the connecting rod and uncommanded shutdown of the engine.

DATES: We must receive any comments on this proposed AD by December 5, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may examine the comments on this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Hakala, Aerospace Engineer, Special Certification Office, FAA, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, TX 76193; telephone (817) 222–5145; fax (817) 222–5785.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21331; Directorate Identifier 2005–NE–07–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DOT docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or

signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the docket that contains the proposal, any comments received and, any final disposition in person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management Facility receives them.

Discussion

On October 16, 2003, ECi informed the FAA that an engine experienced an in-flight engine failure and uncommanded shutdown. The failure occurred after 50 hours time-in-service (TIS) after an engine overhaul. The engine overhaul included replacing the engine crankshaft, the connecting rods, and the connecting rod bearings. We conducted a post-accident investigation that included an engine teardown. The engine teardown showed that one connecting rod and one connecting rod bearing were destroyed. The three remaining connecting rod bearings had an unusual ''tank tread'' pattern around the surface that mates with the crankshaft journal. A visual examination of the three remaining connecting rods revealed the journal bores had the same ''tank tread'' pattern found on the mating surface of the bearings.

Results of the FAA's Investigation of New Connecting Rods

We approved reciprocating engine connecting rods, P/N AEL 11750, for use on Lycoming 360 and 540 series reciprocating engines under a Parts Manufacturer Approval (PMA). The Airmotive Engineering Corp, Division of Engine Components Incorporated, holds the PMA. ECi markets the parts as ECi parts. We determined the ECi engineering drawings for the connecting rods contain inadequate criteria to control circularity of the bearing bore. Because of that, the manufacturing process used to machine the bore resulted in excessive scalloping. The scalloping resulted in excessive variation in the circularity necessary for the proper functioning of the connecting rods. We also determined the inspection methods that ECi used to inspect the newly manufactured connecting rods were not sufficiently accurate to identify the manufacturing defects in circularity.

We obtained four new ECi connecting rods from the field and two new ECi connecting rods directly from ECi. A U.S. Government test facility measured the connecting rods using high-precision test measuring equipment. The test facility found the journal bores in all of the connecting rods had excessive scalloping. Our analysis of measurements from the test facility show that the scalloping prevents proper fitting between the connecting rod and it's associated rod bearing. The poor fit between these critical engine components results in a significant reduction in performance and fatigue strength. Journal bores with excessive surface scalloping or machine chattering can result in two adverse conditions:

(1) Poor contact between the journal bore and it's bearing substantially reduces heat transfer from the bearing. The resulting increase in bearing temperature substantially reduces the fatigue strength of the bearing.

(2) The scalloping or machine chattering prevents adequate development of the hydrodynamic oil film needed to lubricate and cool the bearing. This allows metal-to-metal contact between the bearing and the connecting rod journal

On December 22, 2003, ECi made a design drawing revision to better define dimensions and improve the quality control for the manufacture of the connecting rod, P/N AEL 11750. We have not received any reports of service difficulties for connecting rods, P/N AEL 11750, produced after January 2004 with the improved design.

This condition, if not corrected, could result in fatigue failure of the connecting rod and uncommanded shutdown of the engine.

FAA's Determination and Requirements of the Proposed AD

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

- Replacing certain serial-numbered ECi connecting rods, P/N AEL 11750, with 1,500 or more hours TIS on the connecting rod, within 50 hours TIS after the effective date of the AD.
- Replacing certain serial-numbered ECi connecting rods, P/N AEL 11750, with fewer than 1,500 hours TIS on the connecting rod, before accumulating 1,500 hours TIS on the connecting rod.

This proposed AD would also prohibit installing any ECi connecting rod, P/N AEL 11750, with a serial number 54/6 or lower, into any engine after the effective date of the AD.

Costs of Compliance

We estimate that this proposed AD would affect about 2,800 Lycoming Engines 360 and 540 series reciprocating engines installed on aircraft of U.S. registry. We also estimate that it would take about 4 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $450 per connecting rod. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $1,988,000. ECi has indicated that they might provide operators and repair stations credit for returned connecting rods.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Engine Components Incorporated (ECi):
Docket No. FAA–2005–21331;
Directorate Identifier 2005–NE–07–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 5, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Lycoming Engines (formerly Textron Lycoming) 360 and 540 series reciprocating engines specified in Table 1 of this AD with Engine Components Incorporated (ECi) connecting rods, part number (P/N) AEL 11750 installed.

TABLE 1.—ENGINE MODELS

Engine Model
0–360– A1A, A1AD, A1C, A1D, A1F, A1F6, A1F6D, A1G, A1G6, A1G6D, A1H, A1H6, A1LD, A1P, A2A, A2D, A2E, A2F, A2G, A2H, A3A, A3AD, A3D, A4A, A4AD, A4D, A4G, A4J, A4K, A4M, A4N, A4P, A5AD, B1A, B1B, B2A, B2B, C1A, C1C, C1E, C1F, C1G, C2A, C2B, C2C, C2D, C2E, C4F, C4P, D1A, D2A, D2B, F1A6, G1A6, J2A;
HO–360– A1A, B1A, B1B, C1A;

TABLE 1.—ENGINE MODELS—Continued

IO–360– B1A, B1B, B1C, B1D, B1E, B1F, B1F6, B1G6, B2E, B2F, B2F6, B4A, E1A, F1A, L2A;
LO–360– A1G6D, A1H6;
HIO–360– A1A, A1B, B1A, B1B;
AEIO–360– B1B, B1D, B1F, B1F6, B1G6, B2F, B2F6, B4A, H1A, H1B;
O–540– A1A, A1A5, A1B5, A1C5, A1D, A1D5, A2B, A3D5, A4A5, A4B5, A4C5, A4D5, B1A5, B1B5, B1D5, B2A5, B2B5, B2C5, B4A5, B4B5, D1A5, E4A5, E4B5, E4C5, F1A5, F1B5, G1A5, G2A5, H1A5, H1A5D, H1B5D, H2A5, H2A5D, H2B5D;
AEIO–540– D4A5, D4B5, D4C5, D4D5;
IO–540– A1A5, B1A5, B1B5, B1C5, C1B5, C1C5, C2C, C4B5, C4C5, C4D5, C4D5D, D4A5, D4B5, D4C5, E1A5, E1B5, E1C5, G1A5, G1B5, G1C5, G1D5, G1E5, G1F5, J4A5, N1A5, P1A5, R1A5, T4A5D, T4B5, T4B5D, T4C5D, V4A5, V4A5D;
LTIO–540– K1AD;
TIO–540– C1A, E1A, G1A, H1A, K1AD, AA1AD, AB1AD, AB1BD, AF1A, AF1B, AG1A.

These engines are installed on, but not limited to, the aircraft listed in Table 2 of this AD.

TABLE 2.—AIRCRAFT MODELS

Aircraft manufacturer	Aircraft model
Aero Boero	AB–180, AB–260.
Aero Commander	Lark (100), Aero Commander (500, 500–B, 500–E, 500–U).
Aero Engine Service Ltd.	Victa (R–2).
Aerofab Inc.	Renegade 250, Turbo Renegade (270).
Aviamilano	Flamingo (F–250).
Aviat	Husky.
Avions Pierre Robin	(HR100/250).
Beagle	Airedale (A–109), Husky (D5–180 01–U).
Beech Aircraft	Travel-Air (95, B–95, B–95A, B–95B), Duchess 76, Sport, Musketeer Custom III, Sundowner 180.
Bellanca Aircraft	Scout (8GCBC–CS, 8GCBC FP), Super Decathlon (8KCAB–180), Aries T–250.
Bolkow	207, Klemm (K1–107C).
Britten-Norman	BN–2.
Brooklanda	Scoutmaster.
C.A.A.R.P.	S A.N. (M–23III), C.A.P. (10).
C. Itoh and Co.	Fuji FA–200.
Center Est Aeronautique	Regente (DR–253).
Cerva	(CE–43 Guepard).
Cessna Aircraft	Cardinal, Cardinal 172, Teal III. TSC (1A3), Skyhawk, Cutlass RG.
Christen	Husky (A–1), Christen. Pitts (S–2S), (S–2B).
DeHavilland	Drover (DHA–3MK3), Heron Conversion.
Dinfia	Ranquel (IA–51), Querandi (1A–45).
Dornier	(DO–28 , DO–28–B1, DO–8–B1).
Doyn Aircraft	Doyn-Cessna (170B, 172, 172A, 172B).
Doyn Aircraft	Doyn-Beech (Beech 95).
Doyn Aircraft	Doyn-Piper (PA–23 ''160'', PA–23 ''200'', PA–24 ''250'', PA–23 ''250'').
Earl Horton	Pawnee (Piper PA–25).
Embraer	Corioca (EMB–710), Impanema ''AG.''
F.F.A.	Bravo (200).
Found Bros.	(FBA–2C), Centennial (100).
Fuji	(FA–200).
General Aviation	Model 114.
Gippsland	GA–200.
Great Lakes	Trainer.
Grob	G115/Sport-Acro.
Grumman American	Tiger.

TABLE 2.—AIRCRAFT MODELS—Continued

Aircraft manufacturer	Aircraft model
H.A.L.	HPT–32.
Hughes Tool Co.	(269A, 269–A–1, YHO–2HU, 300).
Intermountain Mfg. Co.	Call Air (A–6, A–9, IAR821, IAR–822, IAR–826, IAR–823).
Kingsford-Smith	Bushmaster (O–6).
Lake Aircraft	Colonial (C–2, LA–4, 4A or 4P), Seawolf.
Malmo	Vipan (MF–10B, MF1–10).
Maule	Star Rocket MX–7–180, MX–7–180A, Star Rocket (MX–7–235), Super Rocket (M–6–235), Super Std. Rocket (M–7–235).
Mid-States Mfg. Co.	Twin Courier (H–500), (U–5).
Mooney Aircraft	Master "21" (M–20D, M–20E), Mark "20B", "20D",(M20B, M20C), Statesman (M–20G), Mark "21" (M–20E), ."TLS" M20M.
Moravan	Zlin-50L.
Mundry	CAP–10.
Nash Aircraft Ltd.	Petrel.
Neiva	IPD–590V.
Norman Aeroplace Co.	NAC–1 Freelance.
Omega Aircraft	BS–12D1.
Partenavia	Oscar (P–66).
Penn Yan	Super Cub Conversion.
Pilatus Britten-Norman	Islander (BN–2A–26), Islander (BN–2A–27, IslanderII (BN–2B–26), Islander (BN–2A–21), Trislander (BN–2A–Mark III–2).
Piper Aircraft	Comanche (PA–24), Seminole (PA–44), Cherokee "C"(PA–28 "180"), Cherokee "D" (PA–28 "180"), Archer II(PA–28 "18"), Arrow (PA–28 "180R"), Seminole (PA–44), Comanche (PA–24 "150"), Aztec (PA–23 "250"),Cherokee (PA–24 "250"), Pawnee (PA–24 "235"),Cherokee (PA–28 "235"), Aztec (PA–23 "235"),Cherokee (PA–28 "235"), Comanche (PA–24 "260"),Cherokee Six (PA–32 "260"), Pawnee (PA–25 "260"),Aztec B (PA–23 "250"), Comanche (PA–24 "250"),Aztec C (PA–23 "250"), Aztec F, Comanche (PA–24),Turbo Aztec (PA–23–250).
Pitts	S–1S.
Poeschel	P–300.
Procaer	Picchio (F–15–A).
Rawdon Brow	Radon (T–1).
Regente	N–591.
Rhein-Flugzeughau	RF–V
Riley Aircraft	Rocket-Cessna (310), Turbo-Rocket, Turbo-Aztec.
Robin	Regent (DR400/180), Remorqueur (DR400/180R), R–3170, Aiglon (R–1180T).
Robinson	R–44.
Rockwell	Commander (114, 114B, 114TC).
S A.A.B.	Safir (91–D).
Schweizer Aircraft Corporation	269A.
S.O.C.A.T.A.	Tobago (TB–10), Rallye Commodore (MS–893), Rallye 180GI, Sportana Sportsman (RS–180), Rallye 235CA,Rallye 235GT, Rallye 235C, TB–20, Trinidad TB–20,Trinidad TC TB–21.
Shrike	(500–S).
Societe Aeronautique Normande	D–140, Jodel (D–140C).
Mousquetaire	
Siai-Marchetti	(S–205, SF–260, SF–208).
Silvercraft	
Std. Helicopter	
Sud	Gardan (GY–180).
T. R. Smith Aircraft	Aerostar, (600).
United Consultants	See-Bee.
Utva	75.
Valmet	PIK–23.
Varga	Kachina.
Wassmer	Super 4 (WA–50A), Sancy (WA–40), Baladou (WA–40), Pariou (WA–40), (WA–50), Europa WA–52, WA–421, WA4–2V.
Yoeman Aviation	YA–1.

Unsafe Condition

(d) This AD results from reports of connecting rods with excessive variation in circularity of the journal bores. We are issuing this AD to prevent fatigue failure of the connecting rod and uncommanded shutdown of the engine.

Compliance

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

Engines Not Repaired or Overhauled Since New

(f) If your engine has not been overhauled or had any repair since new, no further action is required.

Engines Overhauled or Repaired Since New

(g) If your engine was overhauled or repaired since new, do the following:

(1) Before further flight inspect the maintenance records and engine logbook to determine if the overhaul or repair facility used ECi connecting rods, P/N AEL 11750.

(2) If the connecting rods are not ECi, P/N AEL 11750, no further action is required.

(3) If the connecting rods are ECi, P/N AEL 11750, and if the serial number is 54/7 or higher, no further action is required.

(4) If the connecting rods are ECi, P/N AEL 11750, and if the serial number is 54/6 or lower, do the following:

(i) If the connecting rod has 1,500 or more hours time-in-service (TIS), replace the connecting rod with a connecting rod that has a SN 54/7 or higher, or that has a P/N not specified in this AD within 50 hours TIS after the effective date of this AD.

(ii) If the connecting rod has fewer than 1,500 hours TIS, replace the connecting rod with a connecting rod that has a SN 54/7 or higher, or that has a P/N not specified in this AD before accumulating 1,500 hours TIS on the connecting rod.

(h) After the effective date of this AD, do not install any ECi connecting rod, P/N AEL 11750, that has SN 54/6 or lower into any engine.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) None.

Issued in Burlington, Massachusetts, on September 28, 2005.

Francis A. Favara,

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

[FR Doc. 05–19940 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22206; Directorate Identifier 2005–CE–45–AD]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Models DG–800B and DG–500MB Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain DG Flugzeugbau GmbH Models DG–800B and DG–500MB sailplanes. This proposed AD would require you to modify the connection of the starter ring gear to the lower drive belt pulley adapter. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent the bolts currently used to connect the starter ring gear to the drive belt pulley adapter from shearing off and the bolt heads falling into the engine compartment. Failure of this connection could render the engine inoperative. Consequently, this failure could lead to loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by November 9, 2005.

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

- *DOT Docket web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact DG–Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257 890; facsimile: ++45 7257 8922; e-mail: *www.dg-flugzeugbau.de*.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. This is docket number FAA–2005–22206; Directorate Identifier 2005–CE–45–AD.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Glider Project Manager, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–22206; Directorate Identifier 2005–CE–45–AD'' at the beginning of your comments. We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–22206; Directorate Identifier 2005–CE–45–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain DG Flugzeugbau GmbH

Models DG–800B and DG–500MB sailplanes. The LBA reports that sheared off bolt heads have been found in the engine compartment of approximately 20 of the specified sailplanes. These bolts connect the starter ring gear to the lower drive belt pulley adapter. Failure of this connection could render the engine inoperative.

What is the potential impact if FAA took no action? The bolts currently used to connect the starter ring gear to the drive belt pulley adapter may shear off and the bolt heads could fall into the engine compartment. Failure of this connection could render the engine inoperative. Consequently, this failure could lead to loss of control of the sailplane.

Is there service information that applies to this subject? DG-Flugzeugbau GmbH has issued Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by LBA on June 29, 2004, and approved by the European Aviation Safety Agency on July 9, 2004.

What are the provisions of this service information? The service information includes procedures for:

—Removing the starter ring gear assembly with adapter and lower pulley;

—Modifying the connection area where the bolts connect the starter ring gear to the lower drive belt pulley adapter; and

—Reinstalling the starter ring gear assembly with the adapter and lower pulley.

What action did the LBA take? The LBA classified this service information as mandatory and issued German AD Number D–2004–347, dated July 2, 2004, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These DG Flugzeugbau GmbH Models DG–800B and DG–500MB sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other DG Flugzeugbau GmbH Models DG–800B and DG–500MB sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent the bolts currently used to connect the starter ring gear to the drive belt pulley adapter from shearing off and the bolt heads falling into the engine compartment. Failure of this connection could render the engine inoperative. Consequently, this failure could lead to loss of control of the sailplane.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service information.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 7 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to do this proposed modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
3 workhours × $65 = $195	$21	$216	$1,512

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–22206; Directorate Identifier 2005–CE–45–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

DG Flugzeugbau GmbH: Docket No. FAA–2005–22206; Directorate Identifier 2005–CE–45–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 9, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
(1) DG–800B	All serial numbers up to and including 8–260, with the exception of 8–247 and 8–258; and
(2) DG–500MB	All serial numbers up to and including 5E220B15, with the exception of 5E190B5.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of bolt failure in the connection of the starter ring gear to the drive belt pulley adapter. The bolt heads may shear off and the bolt heads could fall into the engine compartment. The actions specified in this AD are intended to prevent the bolts currently used to connect the starter ring gear to the drive belt pulley adapter from shearing off and the bolt heads falling into the engine compartment. Failure of this connection could render the engine inoperative. Consequently, this failure could lead to loss of control of the sailplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Remove the starter ring gear assembly with adapter and lower drive belt pulley.	Within 30 days after the effective date of this AD.	Follow DG-Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by Luftfahrt-Bundesamt (LBA) on June 29, 2004, and approved by European Aviation Safety Agency (EASA) on July 9, 2004.
(2) Modify the connection area where the bolts connect the starter ring gear to the lower drive belt pulley adapter.	Within 30 days after the effective date of this AD.	Follow DG-Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by LBA on June 29, 2004, and approved by EASA on July 9, 2004.
(3) Reinstall the starter ring gear assembly with the adapter and lower pulley.	Within 30 days after the effective date of this AD.	Follow DG-Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by LBA on June 29, 2004, and approved by EASA on July 9, 2004.

Note: Until the actions of this AD are done, the FAA strongly recommends you visually inspect the engine compartment before and after each flight for sheared off bolt heads. If discrepancies are found, discontinue use until modification is done. An owner/operator licensed under 14 CFR part 61 or part 65 may do these inspections.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory Davison, Glider Project Manager, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) LBA Airworthiness Directive D–2004–347, dated July 2, 2004; DG–Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by LBA on June 29, 2004, and approved by the EASA on July 9, 2004, also address the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact DG-Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257 890; facsimile: ++45 7257 8922; e-mail: *www.dg-flugzeugbau.de*. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. This is docket number FAA–2005–22206; Directorate Identifier 2005–CE–45–AD.

Issued in Kansas City, Missouri, on September 28, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19936 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22157; Directorate Identifier 2005–CE–44–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Models DG–100 and DG–400 Sailplanes and DG Flugzeugbau GmbH Models DG–500 Elan Series and DG–500M Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Glaser-Dirks Flugzeugbau GmbH Models DG–100 and DG–400 sailplanes and certain DG Flugzeugbau GmbH Models DG–500 Elan Series and DG–500M sailplanes. This proposed AD would require you to modify or replace the complete rudder mount assembly and ensure that the securing washer, castellated nut, and new split pins are installed. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent the universal bearing of the lower rudder mounting from slipping out of the bearing support. The universal bearing slipping out could result in the rudder separating from its support. This failure could lead to loss of sailplane control during flight operations.

DATES: We must receive any comments on this proposed AD by November 9, 2005.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: 011–49 7257–890; facsimile: 011–49 7257–8922.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–22157; Directorate Identifier 2005–CE–44–AD.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–22157; Directorate Identifier 2005–CE–44–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–22157; Directorate Identifier 2005–CE–44–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all Glaser-Dirks Flugzeugbau GmbH Models DG–100 and DG–400 sailplanes and certain DG Flugzeugbau GmbH Models DG–500 Elan Series and DG–500M sailplanes. The LBA reports that on a Model DG–100 sailplane the universal bearing of the lower rudder mounting slipped out of the bearing support and the rudder fell out. Further, the LBA reports that this kind of failure may occur on other DG series sailplanes.

What is the potential impact if FAA took no action? The universal bearing slipping out could result in the rudder separating from its support. This failure could lead to loss of sailplane control during flight operations.

Is there service information that applies to this subject? DG Flugzeugbau has issued Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the outer bearing ring in the rudder mounting for correct installation;

—Modifying or replacing the complete rudder mounting assembly; and

—Ensuring that the securing washer, castellated nut, and new split pins are installed.

What action did the LBA take? The LBA classified this service bulletin as mandatory and issued German AD Number D–2004–348R1, dated September 16, 2004, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA inform the United States under the bilateral airworthiness agreement? These Glaser-Dirks

Flugzeugbau GmbH Models DG–100 and DG–400 sailplanes and certain DG Flugzeugbau GmbH Models DG–500 Elan Series and DG–500M sailplanes are manufactured in Germany and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Glaser-Dirks Flugzeugbau GmbH Models DG–100 and DG–400 sailplanes and certain DG Flugzeugbau GmbH Models DG–500 Elan Series and DG–500M sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent the universal bearing of the lower rudder mounting slipping out of the bearing support. The universal bearing slipping out could result in the rudder separating from its support. This failure could lead to loss of sailplane control during flight operations.

What would this proposed AD require? This proposed AD would require you to modify or replace the complete rudder mount assembly and ensure that the securing washer, castellated nut, and new split pins are installed.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 75 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to do this proposed replacement of the complete rudder mount assembly. We have no way of determining the number of sailplanes that may need this replacement:

Labor cost	Parts cost	Total cost per sailplane
2 work hours × $65 = $130	$265	$395

We estimate the following costs to do this proposed modification of the complete rudder mount assembly. We have no way of determining the number of sailplanes that may need this modification:

Labor cost	Parts cost	Total cost per sailplane
3 work hours × $65 = $195	Not Applicable	$195

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2005–22157; Directorate Identifier 2005–CE–44–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

DG Flugzeugbau GmbH and Glaser-Dirks Flugzeugbau GmbH: Docket No. FAA–2005–22157; Directorate Identifier 2005–CE–44–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 9, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following sailplane models and serial numbers that are certificated in any category:

Model	Serial numbers
DG–100	All Serial Numbers.
DG–400	All Serial Numbers.
DG–500 Elan Series	All Serial Numbers Through 5E23.
DG–500M	All Serial Numbers Through 5E23.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent the universal bearing of the lower rudder mounting from slipping out of the bearing support. The universal bearing slipping out could result in the rudder separating from its support. This failure could lead to loss of sailplane control during flight operations.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Modify or replace the complete rudder mounting assembly.	Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done.	Follow DG Flugzeugbau GmbH Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004
(2) Ensure that the securing washer, castellated nut, and split pins are installed as specified by the DG Flugzeugbau GmbH Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004.	Before further flight after the modification or replacement of the complete rudder mounting assembly required by paragraph (e)(1) of this AD.	Follow DG Flugzeugbau GmbH Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004.

Note: Until the actions of this AD are done, the FAA strongly recommends that an FAA-certified mechanic perform a daily pre-flight inspection to check the position of the outer bearing ring following the requirements of DG Flugzeugbau GmbH Technical Note No. 301/23 issue 2, 323/14 issue 2, 348/18 issue 2, 359/21 issue 2, 370/9 issue 2, 826/44 issue 2, 843/21 issue 2, 866/10 issue 2, dated June 11, 2004, amended July 7, 2004. If the bearing is displaced, we recommend that you discontinue flight operations until you modify or replace the complete rudder mount assembly and ensure that the securing washer, castellated nut, and new split pins are installed.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2004–348R1, dated September 16, 2004, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: 011–49 7257–890; facsimile: 011–49 7257–8922. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. This is docket number FAA–2005–22157; Directorate Identifier 2005–CE–44–AD.

Issued in Kansas City, Missouri, on September 28, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–19935 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0023; FRL–7981–3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Emissions Banking and Trading Revisions for the Mass Emissions Cap and Trade Program for the Houston/Galveston/Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) concerning the Mass Emissions Cap and Trade (MECT) program for emissions of nitrogen oxides (NO_X) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area. Additionally, EPA is proposing approval of several subsections of Chapter 116 of the Texas Administrative Code (TAC) (Control of Air Pollution by Permits for New

Construction or Modification) that provide cross-references to the MECT Program.

DATES: Comments must be received on or before November 4, 2005.

ADDRESSES: Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2005–TX–0023, 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://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. David Neleigh at *neleigh.david@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), at fax number 214–665–6762.
- Mail: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R06–OAR–2005–TX–0023. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through RME, regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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. Guidance on preparing comments is given in the **SUPPLEMENTARY INFORMATION** section of this document under the General Information heading.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which 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 RME or in the official file, which is available at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permitting Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2115; fax number 214–665–6762; e-mail address *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

I. Mass Emissions Cap and Trade Program
A. What is EPA proposing to approve?
B. Summary of MECT program revisions
1. What is the MECT program that has been Federally approved into the Texas SIP?
2. How has TCEQ revised the MECT program?
C. EPA's Analysis
1. How did EPA review the MECT program revisions?
2. What criteria did EPA use to analyze the MECT program revisions?
3. What is EPA's evaluation of the changes related to the switch from 90 percent control to 80 percent control of NO_X emissions from industrial sources?
4. What is EPA's evaluation of the changes in applicability in the MECT program?
5. What is EPA's evaluation of the use of DERCs and MDERCs in the MECT program?
6. What is EPA's analysis of the other revisions to the MECT program?
7. What is EPA's analysis of the Chapter 116 rule language?
8. What is EPA's analysis of the MECT program with respect to section 110(l) of the Clean Air Act?
D. Conclusion
II. General Information
III. Statutory and Executive Order Reviews

I. Mass Emissions Cap and Trade Program

A. What is EPA proposing to approve?

The EPA is proposing to approve revisions to the MECT program for NO_X emissions in the HGB ozone nonattainment area (consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) published at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H, Division 3, sections 101.350–101.354, 101.356–101.360, and 101.363. EPA is also proposing approval of the subsections in 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, which provide cross-references to the MECT program. The sections of Chapter 116 we are proposing to approve are sections 116.111(a)(2)(L), 116.115(b)(2)(C)(iii), 116.176, 116.610(a)(6), and 116.615(5)(C). These revisions were provided in SIP revisions

submitted to EPA on April 12, 2001; January 31, 2003; and December 6, 2004. The revisions make the following changes to the MECT:

- The revisions make changes necessary to accomplish the shift in attainment strategy from 90 percent control of industrial sources to 80 percent control in the HGB area. For a further discussion of this change in control strategy, please see the supporting record for our separate action on the attainment demonstration (RME Docket R06–OAR–2005–TX–0018).
- The revisions expand the applicability of the MECT to additional sources.
- The revisions provide for the use of discrete emission reduction credits (DERCs) and mobile source DERCs (MDERCs) in lieu of MECT allowances, subject to our separate action on the Discrete Emission Credit Banking and Trading program as explained below.
- The revisions include a variety of minor changes to correct grammar and reorganize the rule text for readability.
- The revisions to the Texas Commission on Environmental Quality's (TCEQ's) Chapter 116 permitting rules incorporate cross-references to the MECT program in Chapter 101.

The MECT program is a significant element of the control strategy for the HGB area to comply with the Clean Air Act (CAA) requirements to achieve the ozone attainment standard. As such, the revisions to the MECT and the corresponding sections in Chapter 116 must be evaluated as an integral component of the HGB control strategy to reduce NO_X emissions. We are proposing approval of these revisions to the rules that establish the MECT program, but because of the relationship of the rules to the attainment demonstration, we will not finalize approval of the rules until the revisions to the attainment demonstration are approved. Further revisions allowing DERC and MDERC use in the MECT program will not be fully approved until the rules for DERC and MDERC generation and use have been approved. The rules for DERC and MDERC use and generation and the attainment demonstration are being considered in separate **Federal Register** notices. If our separate actions on the DERC program and the attainment demonstration cannot be finally approved, the MECT program will continue to operate as outlined in our November 14, 2001, final approval of the program (66 FR 57252).

B. Summary of MECT program revisions

1. What is the MECT program that has been Federally approved into the Texas SIP?

The MECT program was adopted as a State regulation on December 6, 2000. The program is mandatory for stationary facilities that emit NO_X in the HGB area which are subject to emission specifications in TCEQ NO_X rules at 30 TAC Chapter 117.106, 117.206 and 117.475, and which are located at a site where they have a collective design capacity to emit 10 tons per year or more of NO_X. The program sets a cap on NO_X emissions beginning January 1, 2002, with a final reduction to the cap occurring in 2007. Facilities are required to meet NO_X allowances on an annual basis. An allowance is the authorization to emit one ton of NO_X during a control period; a control period is the calendar year. Facilities may purchase, bank or sell their allowances. The amount of NO_X allowances is determined by a formula which uses emission rates established in 30 TAC Chapter 117. These emission rates and resulting emission reductions were relied on in the HGB attainment demonstration submitted in 2000. The rules at that time were to reduce overall industrial NO_X emissions by approximately 90 percent. The MECT program has a provision to allow a facility to use emission reduction credits (ERCs) generated through the TCEQ Emission Credit Banking and Trading program to permanently increase the allowances for the individual facility subject to the MECT if the credits were generated for NO_X in the HGB area before December 1, 2000. The MECT also has a provision to allow a facility to use DERCs and MDERCs generated through the TCEQ Discrete Emission Credit Banking and Trading program in lieu of allowances if they are generated in the HGB area. EPA published a final rule approving the MECT program (except for the use of DERCs and MDERCs in the MECT, which we deferred acting on until our action on the DERC program) on November 14, 2001 (66 FR 57252). Texas has subsequently revised the MECT program in SIP submittals dated July 15, 2002, January 31, 2003, and December 6, 2004.

2. How has TCEQ revised the MECT program?

The TCEQ submitted a MECT revision to EPA on July 15, 2002, establishing a new section 101.357, to allow the use of emission reductions generated through the Texas Emission Reduction Program as MECT allowances. EPA is not reviewing or proposing to act on this revision to the MECT program in this document.

Today's action does address several revisions to the MECT that TCEQ submitted to EPA on January 31, 2003, and December 6, 2004. These revisions made changes to support the shift from 90 percent control of industrial sources to 80 percent control in the HGB ozone nonattainment area, expanded the applicability of the MECT, updated and revised the provision of the MECT allowing for the use of DERCs and MDERCs in lieu of MECT allowances, and included a variety of non-substantive changes to correct grammar and reorganize the rule text for readability.

The shift from 90 percent to 80 percent control of industrial sources in the HGB nonattainment area is one of a number of changes made in Texas' mid-course review of the HGB ozone attainment plan. The current plan was approved on November 14, 2001, and called for approximately a 90 percent control of industrial NO_X emissions. As a result of a review of the modeling and data, including an intensive summer study in 2000, TCEQ has revised the plan to decrease the importance of NO_X reductions and to add controls on highly-reactive volatile organic compounds. The MECT, in section 101.353, has been revised to support the shift in attainment strategy from approximately 90 percent to approximately 80 percent NO_X reductions.

To determine the approvability of the change from 90 percent to 80 percent, EPA must consider its impact on the area's attainment plan, and whether it is consistent with section 110(l) of the Clean Air Act. We are examining these questions in our separate action on the revisions to the HGB attainment demonstration, which is being processed concurrently with this action. EPA will not take final action on the changes to the MECT related to the change from 90 percent to 80 percent until final approval of the attainment demonstration is published. Please note that although the MECT was developed as part of the one-hour ozone attainment demonstration, and EPA has revoked the one-hour ozone standard, the MECT remains a necessary component of the SIP under EPA's anti-backsliding provisions of the Phase I rule (40 CFR 51.905(a)(1)). For a further discussion and review of how the anti-backsliding provisions are being met and other issues related to the change in ozone attainment strategy from 90 percent to 80 percent NO_X control, please see the supporting record for our separate

action on the attainment demonstration (RME Docket R06–OAR–2005–TX–0018).

The next revisions we are addressing in this action involve the expansion of the applicability of the MECT to cover all facilities in the HGB ozone nonattainment area that are either at a site that meets the definition of major source at 30 TAC section 117.10, or at a site where they collectively have an uncontrolled design capacity to emit ten tons or more of NO_X per year. Additionally, once a source has become classified as a major source the source will always be subject to the MECT.

The final substantive revision to the MECT that we are considering in this action involves the sections of the MECT providing for the use of DERCs and MDERCs in lieu of MECT allowances. Under the Texas Discrete Emission Credit Banking and Trading program (referred to as the DERC program), a source can generate short-term emission credits by reducing its emissions. Reductions from stationary sources are generated as discrete emission reduction credits (DERCs), and reductions from mobile sources are generated as mobile discrete emission reduction credits (MDERCs). DERCs and MDERCs are quantified, banked and traded in terms of mass (tons) and may be generated and used statewide. Sources can certify reductions of all criteria pollutants, with the exception of lead, but the MECT rules only allow NO_X and VOC DERCs and MDERCs to be used in lieu of MECT allowances. The EPA and the TCEQ Executive Director must approve a demonstration that the use of VOC DERCs or MDERCs would be equivalent to the use of NO_X allowances in reducing ozone. In our November 14, 2001, **Federal Register** action, EPA deferred acting on these provisions until we proposed action on the DERC program. EPA is now considering action on the DERC program in a separate action (RME Docket R06–OAR–2005–TX–0029). TCEQ's revisions to section 101.356 of the MECT establish limits on the quantity of DERCs that can be used in a given control period and on the quantities that TCEQ can allow a given source to use for demonstrating compliance. The use of DERCs and MDERCs in the MECT program will not be Federally approved until the approval of both the revisions to section 101.356 being reviewed here and of the DERC program generally, which is being reviewed in a separate action.

C. EPA's Analysis

1. How did EPA review and evaluate the MECT program revisions?

Generally, SIP rules must be enforceable and must not relax existing requirements. See Clean Air Act sections 110(a), 110(l), and 193.

A guidance document that we used to define evaluation criteria is ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001) (EIP Guidance). This guidance applies to discretionary EIPs adopted to attain national ambient air quality standards (NAAQS) for criteria pollutants, but the EIP Guidance is not EPA's final action on discretionary EIPs. Final action as to any such EIP occurs when EPA acts on it after its submission as a SIP revision. Because the EIP Guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether potential approvability issues arise. A more detailed review of the MECT revisions as compared to the EIP Guidance is in the Technical Support Document (TSD) for the TCEQ Mass Emissions Cap and Trade Program for the HGB Nonattainment Area. The TSD is available at the location given in the **ADDRESSES** section of this document.

2. What criteria did EPA use to analyze the MECT program revisions?

As described in detail in the EIP Guidance, EPA has identified three fundamental principles that apply to all EIPs: integrity, equity, and environmental benefit. The integrity principle provides that emission reductions in EIPs must be surplus, enforceable, quantifiable, and permanent. The equity principle consists of both general equity and environmental justice. The third principle provides that all EIPs should show environmental benefit, whether through faster attainment, more rapid reductions, or greater emission reductions. In our previous approval action, EPA evaluated the MECT against these three principles, specific concerns applicable to multi-source cap-and-trade programs, and applicable CAA requirements. See 66 FR 38231 (July 23, 2001); 66 FR 57252 (Nov. 14, 2001). In the current action, to evaluate the MECT revisions EPA conducted a line-item comparison of the Federally approved and newly adopted state rule language. This comparison included a discussion of applicable EIP Guidance provisions and CAA requirements. Our complete analysis of the MECT revisions is contained in the TSD for this action.

3. What is EPA's evaluation of the changes related to the switch from 90 percent control to 80 percent control of NO_X emissions from industrial sources?

To support the shift from a 90 percent to an 80 percent NO_X control strategy, TCEQ revised the MECT at section 101.353 to include new emission reduction factors for the allocation of allowances. The changes to the reduction factors are based on the corresponding changes to the HGB attainment demonstration. The analysis behind the new reduction factors is evaluated in the TSD reviewing the revisions to the attainment demonstration (RME Docket R06–OAR–2005–TX–0018). EPA will not finally approve these changes until the attainment demonstration revisions including the relaxation of NO_X control to 80 percent are approved. Comments on the appropriateness of the changes from 90 to 80 percent should be directed to the attainment demonstration docket.

4. What is EPA's evaluation of the changes in applicability in the MECT program?

The revisions to MECT applicability at sections 101.350 and 101.351 are approvable because they are not inconsistent with the CAA and because they strengthen the SIP in two ways. First, applicability is now based on the uncontrolled design capacity. By basing the inclusion of facilities on the uncontrolled design capacity, TCEQ has strengthened the cap by preventing sources from installing control equipment to remain outside of the cap. Second, TCEQ has established that once a source is subject to the MECT it will always be subject to the MECT. Combined, these revisions will help ensure that the intended emission reductions will occur and also establish a more viable allowance trading market by increasing and maintaining the number of sources subject to the MECT.

5. What is EPA's evaluation of the use of DERCs and MDERCs in the MECT program?

In our initial MECT approval (66 FR 57252, Nov. 14, 2001), EPA deferred action on the use of DERCs and MDERCs for compliance with the MECT until our action on the DERC rule. In addition to the original MECT submission, TCEQ has submitted revisions to section 101.356 twice since EPA's approval of the MECT program. In this document and the corresponding TSD, we are reviewing and proposing to approve the use of DERCs and MDERCs in TCEQ's MECT program for the HGB area. We will review and act on TCEQ's

rules for generation and use of DERCs and MDERCs in a separate action (RME Docket R06–OAR–2005–TX–0029). The use of DERCs and MDERCs in the MECT program will not be Federally approved until the approval of both the revisions to section 101.356 being reviewed here and the DERC program in 30 TAC Chapter 101, Subchapter H, Division 4 being reviewed in a separate action. Here, EPA is only taking specific comment on the use of DERCs and MDERCs as allowances in the MECT program. Under the Texas program, DERCs and MDERCs can be used for a variety of other purposes. Comments on the generation of DERCs or MDERCs or on the use of DERCs or MDERCs for purposes other than as MECT allowances should be directed to the docket on the DERC rule (RME Docket R06–OAR–2005–TX–0029).

The DERC and MDERC program is what EPA describes as an open market trading (OMT) program. Section 4.1 of the EIP Guidance explains that certain types of EIPs may not be combined because their characteristics and requirements are incompatible. By way of example, it states that an OMT program and a multi-source cap-and-trade program are incompatible and thus should not be combined. Therefore, the fact that the MECT program provides for the use of DERCs and MDERCs in lieu of allowances at section 101.356(h), with corresponding provisions in the DERC rule at section 101.376(b), is contrary to the statement in the EIP Guidance.

The EIP Guidance discourages the use of OMT credits in a multi-source cap-and-trade program based on concerns that the use of OMT credits in the cap program could potentially undermine the integrity of the cap, thus preventing the goals that the cap was established to achieve. EPA is concerned that including OMT credits in a cap-and-trade system could lead to:

- The possibility that more OMT credits will be used in a given year than are generated;
- The possibility that sources will shift production from one source to another, generating credits at the reduced source while no real net benefit in air quality is achieved; and
- The possibility that reductions at unregulated sources will not be real reductions and that they will be used to offset increases at regulated sources.

When a program includes elements that are not consistent with the approaches outlined in our guidance, EPA may still approve the rule if it is consistent with CAA requirements and the rationales underlying the provisions in EPA guidance. In this case, we must determine whether the use of OMT credits (DERCs or MDERCs) in lieu of allowances will, because of the above concerns, undermine the goal of the MECT program, which is attainment of the one-hour ozone standard in the HGB area. EPA should also consider whether there are adequate safeguards to ensure that the additional flexibility provided by the interplay between the DERC and MECT programs will not undermine the HGB rate or progress (ROP) plan and attainment demonstration. We approved the HGB ROP plan on February 14, 2005 (70 FR 07407). The HGB area met its ROP target by a wide margin (over 100 tons per day) so the institution of DERCs in the MECT would not be expected to interfere with ROP.

The reduction in industrial NO_X emissions relied on in the attainment demonstration is achieved by the MECT program, which provides a finite cap on NO_X emissions. Beginning in 2005, the amount of allowances (the authorization to emit one ton of NO_X during a control period, which is the calendar year) under the cap decreases to the final cap level in 2007. The final 2007 cap level was established based on photochemical modeling and other evidence as necessary for the area to meet the one-hour ozone standard. Even after the change from 90 percent to 80 percent NO_X control strategy, the final MECT level is among the most stringent levels of NO_X controls on industrial emissions in the United States.

Because of the stringency of the needed NO_X controls, Texas linked the DERC and MECT programs, in an effort to provide additional flexibility to sites subject to the program while encouraging the development and use of cleaner technologies to reduce NO_X emissions from sources not covered by the cap-and-trade program. Only DERCs and MDERCs generated in the HGB area are available for use in lieu of allowances.

At the time the MECT rules were developed, the number of DERCs available for use in the HGB area totaled over 37,000 tons (all generated by stationary sources; no MDERCs had been generated). Additionally, sources had the ability to make early reductions and continue banking DERCs until the January 1, 2002, implementation date of the MECT. After implementation of the MECT, sources subject to the cap no longer had the ability to generate DERCs because those reductions would take the form of unused allowances. The potential for capped sites to hold these banked DERCs for use in 2005 and beyond was significant enough to negatively impact the HGB ROP plan and attainment demonstration. To guard against more DERCs being used in a given year than are being generated, which might affect the goal of attainment, Texas included the following provisions in the MECT rule limiting the use of NO_X DERCs in lieu of allowances.

First, beginning in 2005, annual use of DERCs within the MECT is limited to 10,000 DERCs collectively for all sites within the HGB area. This provision eliminates the potential for sites subject to the MECT to use a large quantity of DERCs in a single year and negatively impact the HGB ROP plan and attainment demonstration. All requests to use DERCs (or MDERCs) in the MECT must be made by October 1 of the control period for which the DERCs (or MDERCs) would be used. In terms of the 10,000 DERC limit, TCEQ will approve requests to use DERCs in the amount of 250 tons or less for a given control period. After October 1, when all requests to use DERCs have been received, TCEQ determines how to respond to any requests to use DERCs in an amount exceeding 250 tons. TCEQ may reduce any such request so that the total amount of all DERCs used collectively does not exceed 10,000. If all the requests to use DERCs in a given control period are less than the 10,000 limit, TCEQ will then address requests for more than 250 tons. For these requests, TCEQ determines the number of remaining DERCs under the 10,000 limit that were not approved in the requests of 250 tons or less. These extra DERCs may be apportioned based on the percentage of DERCs in excess of 250 requested for use by those sites relative to the total amount of extra DERCs available.

Second, depending on when the DERCs were generated, the MECT rule requires the use of DERCs at specified ratios. Beginning in 2005, DERCs generated before January 1, 2005, are required to be used at a ratio of four DERCs to one allowance. The ratio of DERCs to allowances increases to a 10 to 1 ratio for DERCs generated before 2005 and used in the 2007, or subsequent, control periods. By way of example, if DERC usage equaling the full 10,000 limit is approved for use in the 2007 control period, the overall cap would be increased by 1,000 allowances. Any DERCs generated after January 1, 2005, are available for use within the MECT at a one to one ratio, but are still included in the 10,000 DERC collective limit. We believe these ratios guard against the possibility that the availability of historic reductions would permit the use of more DERCs in a year than are generated, which could

interfere with attainment or reasonable further progress.

As a further safeguard against the possibility of undermining the attainment demonstration by allowing the use of more DERCs in any given year than are generated, TCEQ added an additional 2.7 tons per day into the attainment model beyond the emissions that would be allowed based on source allocations. This additional 2.7 tons per day represents the maximum amount of pre-2005 DERCs available for use in the attainment year 2007. To arrive at this number, TCEQ divided the 10,000 DERC limit by 10 to yield a total of 2.7 tons per day that could be reintroduced into the cap. DERCs generated after 2005 by sources outside of the cap could not be quantified as those reductions would be generated through voluntary measures. TCEQ therefore assumed that all DERCs that would be used in the 2007 control period were pre-2005 DERCs. Including these added emissions in the attainment modeling is analogous to cap-and-trade programs that set aside a percentage of the modeled emissions for new source growth or other purposes.

The MECT program also provides that MDERCs can be used in lieu of allowances at a ratio of one MDERC to one allowance. MDERCs are not included in the 10,000 DERCs limit in any given control period. TCEQ incorporated MDERCs into the MECT to provide incentives for mobile reductions. Although there is no set limit for MDERC usage under the MECT, from our experience with open market trading programs, we can reasonably predict that a relatively small quantity of MDERCs will be generated. Consistent with our prediction, we note that only 60 tons of MDERCs have been banked as of August 1, 2005.

TCEQ has also committed to making certain revisions to the DERC program to ensure that the DERCs used are real, surplus, and consistent with the assumptions in the attainment demonstration. These revisions will include:

- Prohibiting the generation of DERCs from permanent shutdowns (See RME Docket R06–OAR–2005–TX–0029);
- Ensuring that reductions can only come from process changes or the installation of control equipment that result in less emissions per unit of production, thus preventing reductions from production shifting as a method of DERC generation;
- Clarifying the provisions that allow for public comment and EPA approval of quantification protocols to ensure that the reductions used for DERC generation are quantifiable.

A more complete description of the criteria for DERC generation is included in the supporting documents for the DERC rule.

Additionally, section 101.363 requires TCEQ to audit the MECT program every three years. If the use of DERCs or MDERCs is shown to negatively impact attainment, TCEQ will remove this flexibility from the program.

With the restrictions outlined above, we believe that permitting the use of DERCs and MDERCs in lieu of allowances provides additional flexibility in compliance with the MECT program without undermining the goal of attaining the one-hour ozone standard in the HGB area. EPA also believes that the restrictions placed on the use of DERCs and MDERCs in the MECT will prevent such use from damaging the integrity of the MECT program and the HGB attainment demonstration. Because the basis for the use of DERCs and MDERCs in the MECT is, in part, the modeling and attainment demonstration for the HGB area, EPA cannot grant a final approval of this provision of the MECT program until EPA issues a final approval of the attainment modeling provided as a mid-course review SIP revision. The attainment demonstration and DERC program are being concurrently proposed for approval (RME Dockets R06–OAR–2005–TX–0018 and R06–OAR–2005–TX–0029).

6. What is EPA's Analysis of the Other Revisions to the MECT Program?

The additional revisions to the MECT at sections 101.352, 101.354, 101.359, and 101.360 are also approvable because they are consistent with the EIP Guidance and meet the requirements of section 110(l) of the Clean Air Act as explained below. In section 101.352(b), the TCEQ changed the date for the true-up period from February 1st following the control period to March 1st, beginning with the first control period of January 1, 2003. This revision corrected a typographical error in the Federally approved MECT that ended the true-up period on February 1st and determined compliance with the cap on March 1st. Section 7.4 of the EIP Guidance also recommends a true-up period of 60 days for control periods up to a year. The revision to section 101.352(e) further refines the group of facilities that can use MECT allowances for the correlating one to one portion of NSR offsets as only new or modified facilities that are not considered existing facilities under section 101.350(e). The majority of the revisions to section 101.354 are corrections to grammar and section numbering. The new section 101.354(e) is a measure to strengthen the SIP by discouraging demand shifting. If a facility subject to the MECT shifts production or activity to a facility not subject to the MECT, the TCEQ will deduct allowances from the MECT facility equal to the increase in emissions that resulted from the demand shifting. The revisions to section 101.359 establish expanded reporting requirements for facilities subject to the MECT and provide for the imposition of penalties on facilities that miss reporting deadlines. The revisions to section 101.360 provide more detail on the requirements for level of activity reporting. Our full review of these revisions can be found in the TSD.

7. What is EPA's Analysis of the Chapter 116 Rule Language?

The new subsections of Chapter 116, sections 116.111(a)(2)(L), 116.115(b)(2)(C)(iii), 116.176, 116.610(a)(6), and 116.615(5)(C), submitted by TCEQ on April 12, 2001, are approvable. These subsections establish the permitting requirements for the facilities subject to the MECT. Collectively, these subsections reinforce the requirements of the MECT program by stating that facilities must possess allowances before operation and that an owner or operator of a new facility must identify the source of allowances it will rely on in the permit.

8. What is EPA's Analysis of the MECT Program With Respect to Section 110(l) of the Clean Air Act?

Section 110(l) of the Clean Air Act states:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

As a general matter, the satisfaction of the environmental benefit principle and the other integrity principles applicable to trading programs will tend to demonstrate that a trading program will be consistent with section 110(l). Here, however, as previously noted, the revisions to the MECT are a part of a revised ozone attainment strategy for the HGB area. In addition, we are reviewing the limited use of DERCs in the MECT. The revised strategy's reduced level of industrial NO_X control and the effect of the use of DERCs in the MECT are being evaluated separately in the HGB attainment demonstration for the 1-hour ozone standard. The section 110(l) analysis for our action on the MECT

therefore relies on the analysis conducted for the HGB attainment demonstration.

D. Conclusion

EPA reviewed the MECT program revisions with respect to the expectations of the EIP Guidance document and the requirements of the Clean Air Act. EPA has concluded after review and analysis that the revisions to the MECT program are approvable. EPA is proposing to approve the revisions to sections 101.350–354, and 101.360 submitted by TCEQ on January 31, 2003, for rule log number 2002–044–101–AI; and the revisions to sections 101.356 and 101.359 submitted by TCEQ on December 6, 2004, for rule log number 2003–064–101–AI. EPA has also reviewed the subsections in 30 TAC Chapter 116 which provide cross-references to the MECT program, and has concluded that these subsections are necessary for the implementation of the MECT program. We are proposing to approve sections 116.111(a)(2)(L), 116.115(b)(2)(C)(iii), 116.176, 116.610(a)(6), and 116.615(5)(C) submitted by TCEQ on April 12, 2001, for rule log number 2000–047–116–AI.

We will not take final action on these rules, however, until we finally approve the attainment demonstration. In addition, revisions allowing DERC use in the MECT program will not be fully approved until the rules for DERC generation and use have been approved. The rules for DERC generation and use and the attainment demonstration are being considered in separate actions.

II. General Information

A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by File ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official file. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

III. 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 (Public Law 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 27, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–19995 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0018; FRL–7980–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Ozone Attainment Plan for the Houston/Galveston/Brazoria Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the State Implementation Plan (SIP) for the State of Texas as it applies to the Houston/Galveston/Brazoria (HGB) Ozone nonattainment area. These plan revisions result from more recent information on ozone formation in the Houston/Galveston area indicating that a combination of controls on oxides of Nitrogen (NO_X) and highly reactive volatile organic compounds (HRVOCs) should be more effective in reducing ozone than the measures in the previously approved plan which relied almost exclusively on control of NO_X. Approval of these revisions will incorporate these changes into the federally approved SIP.

DATES: Comments must be received on or before November 4, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06–OAR–2005–TX–0018, 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://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 am and 4 pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID No. R06–OAR–2005–ST–0018. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME website and the Federal regulations.gov 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* 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 RME or in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Guy R. Donaldson, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7242 fax number 214–665–7263; e-mail address *donaldson.guy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Background

A. What Are the Actions Being Proposed Here?

EPA is proposing to approve the following revisions to the approved 1-hour ozone attainment plan for the HGB area:

- TCEQ's revised demonstration, submitted December 2004, that the 1-hour ozone standard will be achieved in 2007.
- The revised motor vehicle emissions budgets associated with the revised attainment demonstration.
- TCEQ's revised demonstration that all reasonably available control measures have been adopted for the HGB area.
- Revisions to satisfy the enforceable commitments contained in the previously approved SIP (November 2001, 66 FR 57160). With respect to its original enforceable commitment to reduce NO_X emissions, TCEQ has instead substituted reductions in HRVOCs for a portion of these NO_X reductions and shown that the HRVOC reductions are as effective in reducing ozone levels.
- Revisions to the industrial NO_X rules submitted January 2003, which included several miscellaneous changes and the reduction in stringency from a nominal 90% to 80% control.
- Revisions to the Texas Inspection and Maintenance (I/M) rules that drop three counties from the I/M program. In addition, several miscellaneous changes are proposed for approval.
- Repeal of the vehicle idling rule.
- Repeal of the Small Spark Engine Operating Restrictions.
- Revisions to the Speed Limit Strategy.
- Revisions to the voluntary mobile emissions program (VMEP).

To replace the above measures being repealed or relaxed, Texas has adopted the following new control measures:

- Annual Cap on HRVOC emissions.
- Hourly (short-term) limit on HRVOC emissions.
- Improved requirements for HRVOC fugitive emissions.
- Requirements for Portable Gasoline containers.

Separately, EPA has proposed or is proposing to approve the newly adopted measures. Comments on the proposed approval of the new control measures should be directed to these separate **Federal Register** actions. The actions addressed in this rulemaking in conjunction with the new HRVOC rules, if approved, will provide for timely attainment as demonstrated through the modeling analysis. In addition, Texas has shown that these revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act. (Section 110(l) demonstration).

B. Why Control Ozone?

Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can also worsen bronchitis and asthma and reduce lung capacity. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. The standard of 0.12 ppm averaged over a 1-hour period was adopted in 1979. In July 1997, EPA adopted a revised standard of 0.08 ppm averaged over an 8-hour period. In the Phase I Implementation Rule (April 30, 2005, 69 FR 23951) for the 8-hour standard, EPA provided for revocation of the 1-hour standard for most areas including HGB on June 15, 2005. Also, EPA established anti-backsliding provisions to insure that areas maintain the progress expected under the requirements of the 1-hour standard as areas transition to developing programs to meet the 8-hour standard.

C. What Does the Currently Approved SIP for HGB Contain?

On November 14, 2001, EPA approved the 1-hour ozone attainment plan for the HGB nonattainment area. This plan relied primarily on reductions in emissions of NO_X to project attainment. The plan included a wide variety of controls on NO_X emissions including an approximately 90% reduction in industrial NO_X emissions, vehicle inspection and maintenance in eight counties, and the Texas Emission Reduction Program (TERP). The plan, however, did not contain sufficient adopted control measures as needed to demonstrate attainment. Because the State had adopted NO_X measures more stringent than any where else in the country and was unable to identify specific NO_X measures by which to achieve all of the needed emission reductions, the State included an enforceable commitment to adopt rules to achieve the 56 tpd of additional emission reductions which were necessary to demonstrate attainment. The additional measures were to be adopted in two phases; measures to achieve 25% of the needed reductions were to be adopted by December 2002 with measures to achieve the remaining emission reductions to be adopted by May 2004. In addition, Texas committed to perform a mid-course review, evaluating the modeling, inventory data and other tools and assumptions used to develop the plan and make adjustments to the plan to provide for timely and cost effective attainment. If, based on the mid-course review, more or fewer NO_X reductions were necessary, Texas committed to provide the revised analysis to EPA for review.

Texas, however, was sued in State court on its plan for the Houston area. The litigants alleged that the controls on industrial NO_X emissions of approximately 90% would not be effective and that instead the State should be controlling releases of HRVOCs. Texas entered into a settlement agreement with the litigants whereby one facet of the mid-course

review was accelerated to determine if the point source NO_X controls could be relaxed and replaced with controls on HRVOCs. This study and any consequent rule changes were to be completed by December 2002.

D. What Revisions to the State Implementation Plan Are Being Considered Here?

The following submissions which impact the HGB attainment plan are being considered :

January 28, 2003: This submission responded to the State's settlement agreement to provide an accelerated evaluation of whether the industrial NO_X controls could be relaxed and controls on HRVOCs could be substituted. Based on the study, the commission adopted relaxed controls on NO_X emissions from industrial sources and new controls on HRVOCs. Texas also adopted a number of minor revisions to the general VOC rules. Finally, the State also provided a demonstration that TERP emission reductions would be sufficient to achieve the 25% of the NO_X reductions needed to demonstrate attainment (i.e., about 14 tpd).

October 16, 2003: This submission delayed compliance for the I/M program in Chambers, Liberty and Waller Counties. (RME R06–OAR–2005–TX–0035)

October 6, 2004: This submission repealed the I/M program in Chambers, Liberty and Waller Counties.(RME R06-OAR–2005-TX–0035)

November 16, 2004: This submission repealed a ban on morning operations of lawn service contractors.

December 17, 2004: This submission was submitted to meet the State's commitment to provide a mid-course review SIP. Based on the updated analysis, the State further tightened controls on HRVOCs in Harris county and revised or repealed a number of NO_X control measures including, the vehicle idling prohibition (Docket R06–OAR–2005–TX–0013), the speed limit strategy, the voluntary mobile emissions program (VMEP) and the commitment to achieve NO_X reductions reductions beyond the initial 25% provided in January 2003 (*i.e.*, revoked the State's commitment to achieve 42 tpd of the NO_X reductions that were included in the enforceable commitment as part of the prior attainment demonstration).

E. What General Criteria Must These Revisions Meet To Be Approvable?

To be approved, the revisions to the attainment demonstration must meet several requirements. First, the State submission must demonstrate that the revised plan, as a whole, will result in attainment of the 1-hour as expeditiously as practicable but no later than 2007. This is necessary, even though the 1-hour standard was revoked on June 15, 2005, because the approved SIP commits the State to adopt 56 tons/day of additional NO_X reductions unless, based on the mid-course review analysis, the area can show attainment of the 1-hour standard by 2007 with a different mix of emission reductions.[1] In Section II.A. we discuss TCEQ's revised 1-hour attainment demonstration. Second, the measures in the revised control strategy must meet the requirements for being creditable under the Clean Air Act and must be permanent, surplus, quantifiable and enforceable and achieve the necessary amount of reductions. The new and revised measures are discussed in Section II.B. and II.C. Some of these control measures have been or are being reviewed in separately proposed rules. Before the revisions to the attainment plan can be finally approved, all of the control measures relied on in the attainment plan must also be approved. Third, the State must show that the revised control strategy includes all reasonably available control measures (RACM). This showing is discussed in Section II.D. Fourth, the State must show, as required by section 110(l) of the Clean Air Act, that the revisions to the plan will not interfere with attainment or reasonable further progress or any other applicable requirement of the Act. Compliance with 110(l) is discussed in Section II.E. Finally, the State must show that it has met all of the enforceable commitments contained in the approved SIP. (Instead of meeting the enforceable commitment to achieve the remaining 42 tpd NO_X reductions, the State has adopted controls on HRVOCs and submitted modeling to demonstrate that the 42 tons/day of NO_X reductions is not necessary for the HGB area to attain by November 2007.) Enforceable commitments are discussed in Section II.F.

II. Evaluation

A. One Hour Attainment Demonstration

1. What Modeling Approaches Were Used for This Attainment Demonstration?

As required by the Clean Air Act, Texas has used photochemical grid modeling in its demonstration that the control strategy for the HGB area will achieve attainment by 2007. Also, as allowed under EPA policy, TCEQ has introduced other evidence, referred to as weight of evidence, to supplement the modeling analysis. The modeling provided in the mid-course review SIP revision builds on modeling performed for the January 2003 SIP revision which TCEQ submitted in support of reducing the stringency of the industrial NO_X rules and adopting measures for the control of HRVOCs.

The SIP revision actually relies on two sets of modeling analyses. First, the SIP relies on modeling performed by the TCEQ that is intended to simulate the routine emissions that occur in the HGB area and determine the level of routine emissions that can be allowed in the area to provide for attainment. Second, the SIP relies on modeling that was provided through a collaborative effort (known as project H13) of the Houston Advanced Research Center, the TCEQ, the University of Texas and the University of North Carolina. The project H13 report was entitled, ''Variable Industrial VOC Emissions and Their Impact on Ozone Formation in the Houston Galveston Area,'' April 16, 2004. This second modeling effort was used to estimate the impact of non-routine emission events on ozone levels. This two pronged approach is consistent with observations that indicate that Houston's air quality problems stem from the combination of two phenomena, normal routine emissions and large non-routine releases of HRVOC emissions. For a more complete description of the modeling procedures and EPA's evaluation of these procedures, see the Technical Support Document (TSD) in the Docket for this action (RO6–OAR–2005–TX–0018).

2. What Is a Photochemical Grid Model?

Photochemical grid models are the state-of-the-art method for predicting the effectiveness of control strategies in reducing ozone levels. The model uses a three-dimensional grid to represent conditions in the area of interest. In this case, TCEQ has developed a grid system that stretches from beyond Austin to the west, to Georgia to the east, to Nebraska to the north and into the Gulf of Mexico to the south. The model uses nested grid cells of 36 km on the outer portions, 12 km in east Texas and portions of nearby States and a 4 kilometer grid cell covering the HGB and Beaumont Port Arthur (BPA) areas. For more information on the modeling domain, please see the TSD. The model simulates the movement of air and emissions into and out of the three-dimensional grid cells (advection and

[1] In addition, EPA has retained the 1-hour attainment demonstration requirement as an applicable requirement under the Phase I rules antibacksliding provisions. See 40 CFR 51.900(f).

dispersion); mixes pollutants upward and downward among layers; injects new emissions from sources such as point, area, mobile (both on-road and nonroad), and biogenic into each cell; and uses chemical reaction equations to calculate ozone concentrations based on the concentration of ozone precursors and incoming solar radiation within each cell.

Air quality planners choose an historical episode of high ozone levels to apply the model. Running the model requires large amounts of data inputs regarding the emissions and meteorological conditions during an episode. Modeling to duplicate conditions during an historical episode is referred to as the base case modeling and is used to verify that the model system can predict the historical ozone levels with an acceptable degree of accuracy. If the model can predict the ozone levels in the base case, it can then be used to project the response of future ozone levels to proposed emission control strategies.

3. What Episode Did Texas Choose To Model?

Texas chose an historical episode, August 19–September 6, 2000, that encompassed the time period of the Texas Air Quality Study (TxAQS) 2000. During this study, researchers from around the country participated in an intensive study of ozone formation in the HGB area, collecting additional meteorological and chemical data. This study has provided a wealth of information to test the assumptions in the model. EPA believes that the extended episode from August 19–September 6, 2000, is an acceptable episode for development of the 1-hour attainment plan. It encompasses 13 exceedance days and contains a variety of meteorological conditions which resulted in high concentrations of ozone in the area as measured on both a 1-hour and 8-hour basis.

4. How Well did the Model Perform?

Model performance is a term used to describe how well the model predicts the ozone levels in an historical episode. As models have to make numerous simplifying assumptions and the system being modeled is very complex, model predictions will never be perfect. EPA has developed various diagnostic, statistical and graphical analyses that TCEQ has performed to evaluate the model's performance and determine if the model is working adequately to test control strategies. For a subset of days, August 25, 26, 29, 30, 31, September 1–4 and 6, TCEQ deemed the model's performance adequate for control strategy development to address routine emissions. EPA agrees that the overall model performance is adequate but notes that the model tends to under-predict on high days and over-predict on low days raising some uncertainty in the control strategy modeling. At least part of the under prediction has been attributed to non-routine emissions not captured in the modeling. This is discussed further in the section on alternative design values. It is also worth noting that, to achieve adequate performance, TCEQ adjusted the amount of HRVOC emissions in the model above the reported emission inventory values based on ambient measurements which demonstrated that reported HRVOC emissions were underestimated. This adjustment is discussed in more detail in later sections.

5. What Did the Results of the Modeling of Routine Emissions Show?

The results of modeling the revised control strategy are shown in Table 1.

Episode day	Measured peak	Modeled peak (base case)	Modeled peak (future case [2])
August 25	194	156.5	121.6
August 26	140	149.4	113.6
August 29	146.7	151.2	113.6
August 30	200.5	137.2	122.5
August 31	175.5	173.0	147.6
September 1	163.7	136.7	119.5
September 2	125.5	152.7	128.6
September 3	127.2	139.3	115.0
September 4	145.0	158.0	125.2
September 6	156.0	152.9	125.1

Table 1 shows that on all of the days except August 31, the modeled control strategy was predicted to bring the area under or very near the one-hour standard of 125 ppb. The modeling, however, incorporates only routine emissions in the future case and reported non-routine emissions in the base case. As will be discussed in more detail in later sections, TCEQ believes that large non-routine emission events not included in the modeling also contribute to high ozone levels in the HGB area. These non-routine emission events explain, in part, the model's under-prediction on several days such as August 25th, 30th, and September 1st.

As discussed in the weight of evidence section regarding alternative design values, the TCEQ believes that without the influence of emission events, an alternative design value of 144 ppb can be estimated. If 144 ppb is a reasonable representation of the area's ozone levels due to routine emissions, then the modeling results in Table 1 indicate sufficient reductions in ozone levels due to routine events. In addition to the modeling results and the alternative design value approach which is explained later in this notice, TCEQ has presented other evidence to demonstrate that attainment will be reached. These additional demonstrations are included in the weight of evidence section.

To address the part of the ozone levels due to non-routine emissions, TCEQ established a short term limit of 1200 lb/hr on emissions of HRVOCs. The development of this limit is discussed in the next section on emission event modeling. The purpose of this limit is to reduce the frequency of non-routine emission events sufficiently so that emission events impacting peak ozone levels will be reduced in frequency to less than 1 event per year and thus will not impact attainment of the 1-hour standard.

We recognize that there is considerable uncertainty regarding the impact of emission events on peak ozone. As we discuss in the next section on emission event modeling, the project H13 study seems to indicate a smaller impact of emission events on peak ozone levels than the alternative design value approach. The projected smaller

[2] These values also do not include the impact of wildfires as discussed in the WOE section.

impact could stem from the following reasons. First, the H13 study looked at the impact of emission releases after the institution of NO_X controls, whereas the alternative design value analysis performed by TCEQ is based on historic data before the institution of controls. Thus, the impact of emission events in the past is likely to be larger than events in the future when there is less NO_X with which to react. Second, the frequency of events was based only on detected and reported events. Past monitoring and reporting techniques may not have detected all events. The improved HRVOC reporting rules should help address this possible problem. Finally, project H13's assumptions regarding the frequency of events looked only at events occurring at the most sensitive times and location. Larger events occurring at slightly less sensitive times and locations could also be impacting peak ozone. On the other hand, it is likely that the alternative design value approach overstates the impact of emission events. Some of the rapid rises in monitored ozone that are filtered out in the alternative design value approach could be caused by narrow continuous plumes of ozone sweeping across a monitor as winds shift direction. Weighing the available information, EPA believes that the occurrence of emission events in the HGB area that are not included in the model contribute at least in part to the model's under prediction of some measured ozone levels. The short-term limit will address these non-routine emission events. In addition, the controls on routine emissions will provide the reductions in the ozone due to routine emissions necessary to reach attainment. In addition, Texas has considered other weight of evidence information indicating there will be more improvement in air quality than can be expected demonstrated by the modeling of routine emissions.

6. What Did the Results of the Emission Event Modeling Show?

Traditionally ozone control plans have been based on the assumption that emissions for an area do not change significantly from day to day and differences in pollution levels are caused by changes in the meteorological conditions between days. This assumption has been reexamined for the Houston area because of the number of non-routine emissions that are reported in the Houston area from the refining and petrochemical industry.

The project H13 report, ''Variable Industrial VOC Emissions and Their Impact on Ozone Formation in the Houston Galveston Area,'' April 16, 2004, looked at the potential impact of emission releases in the area. It determined, by examining the TCEQ emission events data base and records of emissions from sources with monitors on flares and cooling towers, that ''variability in HRVOC emissions from point sources is significant and due to both variability in continuous emissions and discrete emission events.'' The area wide variability had the following characteristics:2–3 times per month HRVOC emissions variability > 10,000 lbs/hour,2–3 times per month HRVOC emissions variability 5,000–10,000 lbs/hour, daily HRVOC emissions variability > 100 lbs/hour.

Based on the above findings, the researchers then examined the impact that emissions variability could have on peak ozone levels by modeling the impact of emission events of various sizes at various locations and times. It was determined that an event of 1,000 lbs in the most sensitive area and during the most sensitive time could have a 1–2 ppb impact on the peak ozone level within the fine grid modeling domain. Larger events would have correspondingly larger impacts on ozone levels. A 10,000 lb release at the most sensitive place could have a 10–20 ppb impact on ozone levels.

The study, based on assumptions regarding the frequency of ozone conducive weather conditions, the time window most sensitive to releases and the location of most sensitive releases, presented the results of a Monte Carlo simulation to estimate the probability and expected magnitude of emission events that would impact peak ozone levels. The report states that if no actions were taken to reduce emissions variability, an air quality plan should anticipate that at least one event per year of 1,000 lbs would happen at the right time and the right place to impact peak ozone. Based on this finding, TCEQ adopted a short-term limit on HRVOC emissions designed to reduce the magnitude and frequency of emissions events. This is not to say that a 1–2 ppb increase in ozone is not significant, but that with the short term limit, the occurrence of non-routine events at the times and places to impact peak ozone will be diminished sufficiently as not to impact attainment with the 1-hour ozone standard. Because facilities would be expected to take action to avoid events of 1,200 lbs/hr, the frequency of such events in the future will be lower than in the past and therefore less than 1 event per year impacting peak ozone should be expected. As discussed, some non-routine emissions, in the past, may not have been detected or reported in which case the actual frequency of events impacting peak ozone levels may be higher than projected in project H13, which as discussed previously, would help explain the under-prediction in the routine modeling. The improved monitoring requirements in chapter 115 should serve to prevent undetected HRVOC releases in the future and the specter of enforcement will cause facilities to take measures to prevent emission events. This is further discussed in the section on the short term and long term cap.

7. How Did Texas Handle Questions About Emission Estimates?

TCEQ has followed acceptable procedures for the development of the base case inventory, following or building upon EPA guidance. Despite these efforts, one of the findings of the TexAQS 2000 study was that observed concentrations of certain compounds, especially light olefins such as ethylene and propylene, were much larger than represented in the reported emission inventory. This conclusion has been reviewed and documented in numerous scientific journals. For more information on these studies see the TSD.

Emissions of these compounds principally come from the petrochemical industry. While it is clear that the reported emissions are too low, the ambient data does not show, however, which types of facilities and equipment are the source of the underestimated emissions. Various methods have been attempted to estimate the actual emissions of VOCs in the HGB area based on the available ambient measurements. TCEQ decided to use data from aircraft flights which indicated NO_X emissions were similar to VOC emissions when considered on a molar basis. Therefore, TCEQ adjusted the molar emission rate of HRVOC emissions at each facility to match the NO_X emission rate. This adjustment is more fully described in Chapter 3 of the SIP revision. The adjustment had the effect of substantially increasing the level of HRVOC emissions in the modeled emissions inventory. Prior to adjusting the inventory, the model did not perform well. Model performance was improved after the adjustment. The adjusted inventory became the basis for achieving acceptable model performance and for the control strategy development.

Clearly, this type of across-the-board adjustment of emissions is not the preferable way to estimate emissions and makes control strategy targeting and development difficult. Unfortunately, using established methods for estimating source emissions has been

demonstrated to be inaccurate. As support for their adjustment approach, TCEQ points out the amount of emissions added to the inventory is corroborated by a study conducted by Environ ATop Down Evaluation of the Houston Emissions Inventory Using Inverse Modeling'' (Yarwood *et al.*, 2003) which indicated that approximately the right amount of reactivity had been added to the model and that further adjustment was not warranted under the then-current model formulation.

EPA believes that the approach Texas has taken to estimate the inventory of HRVOCs is acceptable given the information that is available. This conclusion is supported by the available aircraft data and Environ inverse modeling study. Clearly, this is an area that should be improved as the State develops future SIP revisions.

8. What Actions Are Being Taken To Improve the Emissions Estimates of HRVOCs?

It was the consensus at a conference of emissions inventory experts held in Clear Lake, Texas in 2001, that the errors in the inventory were most likely from errors in the estimates of emissions from cooling towers, flares, fugitive emissions and start-up, shutdown and malfunction events. Texas has moved forward to improve the inventory of HRVOCs in all of these areas by requiring monitoring of cooling towers, flares, pressure relief devices and process vents in HRVOC service. This source monitoring, which will be in place by the end of 2006, should dramatically reduce the amount of error in the HRVOC inventory by more directly measuring both continuous emissions and emissions events. In addition, for all VOCs, Texas is now requiring that correlation equations be used for the estimation of fugitive emissions. This will reduce the amount of error in fugitive emission estimates.

9. What About Estimates of Less-Reactive VOC Emissions?

Texas elected to adjust the reported emission rates of only HRVOCs. Other less-reactive chemicals are also released from flares, cooling towers, fugitive sources and during start up/shutdown and malfunction events and traditional emissions estimation techniques for less-reactive VOCs are the same as those for HRVOC. Thus, it is reasonable to suspect that these chemicals are also under-represented in the inventory. If these chemicals are under-represented in the inventory, the degree of underestimation may be less than for HRVOCs. One reason is that the processes that emit HRVOCs, such as ethylene plants, are often under very high pressures and this may increase the degree of underestimation more than would occur for emissions in lower pressure processes as one would expect leaks under higher pressures would tend to release a greater mass of emissions than lower pressure leaks. Also, many less-reactive VOCs are much lower in volatility than the HRVOCs which could also serve to reduce the amount of emissions underestimation.

There is some evidence from ambient measurements that the less-reactive chemicals are underestimated in the emission inventory, but there are not yet the number of peer reviewed studies regarding these other VOCs that exist for HRVOCs making determination of appropriate adjustment factors problematic. Therefore, Texas chose not to adjust the reported inventory for the less-reactiveVOCs for the attainment demonstration modeling because of the lack of information regarding the appropriate level of emissions. TCEQ did conduct a study of ambient data, referred to in the SIP revision, indicating that emissions might be underestimated by a factor of 4.8. Based on this study, Texas performed a sensitivity run with the model to evaluate the impact potential errors in less-reactive VOC emissions might have on projected attainment. This sensitivity analysis indicated that the addition of less-reactive VOCs using a factor of 4.8 could have an impact of 2–29 ppb on the peak ozone depending on the day. The performance of the model, however, was slightly worsened by the addition of the less-reactive VOCs indicating that possibly too much reactivity had been added. Other analyses performed by the University of North Carolina (Role of Modeling Assumptions in Mid-Course Review, HARC 12.2004.8HRB, 2005) adjusting only fugitive emissions of less-reactive VOCs by lower factors indicated no more than a 0.5 ppb increase in ozone levels. The main differences between the analyses were the assumptions regarding the amount of additional less-reactive VOCs and the amount of HRVOCs in the model.

EPA is proposing to accept the attainment demonstration based on TCEQ's approach to less reactive VOCs, because of the uncertainty on what adjustments might be appropriate and what impact those adjustments might have on the model. We understand that TCEQ is continuing to evaluate ambient data to determine what adjustments to the inventory might be appropriate. Texas has also undertaken a stakeholder process to identify additional ways to improve the emissions inventory. This stakeholder process will be vital to the improvement of future SIP revisions. EPA expects that future SIPs revisions will be based on improved emissions inventories of both less-reactive VOCs and HRVOCs. We note that the move to require the correlation equations for the estimation of less-reactive VOC will serve to improve the estimate of fugitive emissions. Improvements to the emission estimates for cooling towers and flares in less reactive VOC service should also be considered. Roles should also be found for emerging remote sensing technologies that have been shown to detect leaks from sources which have not been traditionally considered such as barge hatches and fittings on floating roof storage tanks.

10. What Additional Evidence Did Texas Provide?

The EPA's 1996 guidance entitled ''Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS'' allows for the use of alternative analyses, called weight-of-evidence (WOE), to provide additional evidence that the proposed control strategy, although not modeling attainment, is nonetheless expected to achieve attainment by the attainment date. More specifically, the intent of this guidance was to be cognizant of the ozone NAAQS, which allows for the occurrence of some exceedances and to consider potential uncertainty in the modeling system. Thus, even though the specific control strategy modeling may predict some areas to be above the NAAQS, this does not necessarily mean that with the implementation of the control strategy, monitored attainment will not be achieved. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in the meteorological and emissions inputs and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely.

Since the future control case modeling in the Texas SIP revision predicts some areas still exceeding the ozone NAAQS, the TCEQ elected to supplement the control strategy modeling with WOE analyses. Texas submitted the following analysis as WOE: August 31st rare meteorology; additional reductions that were not modeled; comprehensive ozone metrics and ambient trends; alternative design value and addressing short-term excursions; and unusual wildfire

activity. Each of these is discussed below.

August 31st Rare Meteorology

A combination of unusual meteorological conditions, extremely high temperatures and winds from the west, occurred on August 31, 2005. The record high temperatures recorded during the August 30–September 5, 2000 period, with several days of maximum temperature ≥104°F (40°C), have occurred in this geographic area only once before in the previous 57 years. On August 31st, the Houston Intercontinental Airport observed its highest temperature ever recorded in the month of August. High temperatures throughout the region led to higher than normal estimated biogenic emissions as the calculation of biogenic emissions is a strong function of temperature. Texas calculated that biogenic emissions within the HGB area were approximately 400 tons/day higher on August 31st than on August 25th which had more moderate temperatures. The elevated biogenic emissions in rural areas west of Houston were also high and, because of somewhat atypical winds from the west, available for transport into HGB. Texas used the source apportionment tool (OSAT) to analyze the contributing emissions to high ozone. The OSAT tool indicated that on the 31st, 78 ppb of the peak ozone could be attributed to biogenics as compared to 24 ppb that could be attributed to biogenics on the 25th. Other days of the episode also had high temperatures but only when combined with the west winds did the unusual impact of biogenics result. Texas points out that winds from the west are not typical of the days that have high ozone in Houston which usually occur on days with a flow reversal due to the land sea breeze effect.

EPA agrees that the meteorological conditions on August 31st, which combined record high temperatures and winds from the west, were not typical of the conditions that lead to high ozone in the HGB area. The higher than normal biogenic emissions and winds from the west appear to have caused the 31st to be a day that did not respond well to the adopted control strategy which is weighted toward control of point sources that are predominant in eastern Harris County. This strategy has been effective in reducing ozone levels on other days of the episode. On the 31st, it appears much of the elevated ozone resulted from the increased biogenic emissions mixing with the NO_X emissions present in the western portion of the HGB area. In this portion of the area, NO_X emissions are primarily from on- and off-road mobile sources. To control ozone levels on days with routine conditions similar to August 31st would require substantial additional controls on mobile and area sources beyond the levels in the current strategy. But because the conditions on the 31st are atypical, we believe the HGB area can attain and a shift in strategy is not warranted.

EPA's rules at 40 CFR 50, Appendix I permit the Regional Administrator to exclude values caused by stratospheric ozone intrusion or natural events in determining whether a NAAQS has been exceeded or violated. Additionally, EPA's long-standing policy and guidance on the handling of air quality data affected by exceptional or natural events permits special consideration to be given to recorded air quality measurements that are affected by unusual events under certain circumstances. See, *e.g.*, ''Guidance on the Identification and Use of Air Quality Data Affected by Exceptional Events (July 1986)''. However, this guidance and other guidance distinguish between those types of events which directly produce emissions of a pollutant or its precursors and meteorological conditions that may affect concentrations of a pollutant emitted by sources. In particular, EPA guidance provides that no consideration is given in determining whether the NAAQS are exceeded or violated for such things as inversions, stagnation of air masses, high temperatures or lack of rainfall. This language has recently been codified in an amendment to section 319 of the Clean Air Act by P.L. 109–59 [SAFETEA]. However, a reasonable distinction may be drawn between the determination of whether NAAQS are exceeded or violated during times when such meteorological conditions exist and the meteorological and emissions data sets used in prospective demonstrations of attainment. In the latter, our policy has been for States to examine the typical conditions that lead to high ozone when modeling to determine whether their control strategies are sufficient to provide for attainment and maintenance of NAAQS. (U.S. EPA, (1996), ''Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS'', EPA–454/B–95–007.) In this case, the combination of conditions on the 31st are not typical and, in fact are quite rare. Therefore, EPA does not believe a shift in control strategy is warranted to address the unusual conditions on August 31st that are expected to occur so infrequently as to be unlikely to impact the area's ability to attain the NAAQS.

Additional Reductions Not Modeled

The TCEQ believes potential additional emissions reductions will take place as a result of programs which have been and will be implemented in the HGB area but which are not reflected in the modeling. These reductions are not included in the modeling because, at present, these reductions are not quantifiable. Emission reductions that were not included in the model should improve the probability of HGB achieving attainment of the ozone NAAQS. First, as industries improve their monitoring capabilities and reduce their HRVOC emissions, the TCEQ anticipates collateral reductions of other VOCs that are present in HRVOC streams. For instance, the TCEQ developed regulations requiring owner/operator of flares in HRVOC service to install flow-meters and comply with maximum tip velocity and minimum heat content requirements to ensure proper combustion by the flare. The tip velocity and heat content requirements apply at all times, not only when the flare is combusting HRVOC streams. Because many of these flares are also used for non-HRVOC streams, the regulations will often result in a reduction of less-reactive VOCs as well. Similarly, TCEQ has improved the leak detection and repair program for streams with more than 5% HRVOC content. When leaks from streams containing both HRVOCs and less reactive VOCs are repaired, other less-reactive VOCs will also be reduced. EPA agrees that these collateral reductions are likely to occur, but we believe the potential benefit of these unmodeled emission reductions has been partially lost because TCEQ allows emission reductions of less-reactive VOCs to offset small increases in HRVOCs using the Maximum Incremental Reactivity (MIR) scale (see Section II.B.4.). It is likely that some of the benefit will be realized because we do not expect that many companies will implement the additional monitoring of less reactive VOCs that would be necessary to establish baselines necessary to participate in the trading program. Also, under the TCEQ rules, less reactive fugitive emissions reductions cannot be credited toward HRVOC increases so collateral reductions in fugitive emissions should be fully realized. Another issue is the uncertainty in the less-reactive VOC inventory. As discussed in the section on emissions inventory uncertainty, it may be that less-reactive VOCs are under-represented in the base case

inventory. Because of uncertainty about the inventory, these collateral reductions may not serve to reduce VOC emissions below what was assumed in the model. These collateral reductions will serve to reduce the degree of any potential under-representation in the inventory and thus reduce this area of uncertainty in the attainment demonstration.

A second program that should result in additional reductions is the Environmental Monitoring Response System (EMRS). The TCEQ and the HRVOC regulated community have expanded the real-time ambient monitoring network of specific VOCs in the HGB area. A primary goal of EMRS is to prevent HRVOC emissions from creating situations that may lead to high levels of ozone. The near real time monitoring and response built into the program, which is further described in the TSD, will provide rapid feed back that should help identify and quickly correct the releases that can lead to high levels of ozones. EPA believes this added scrutiny of ambient VOC levels will result in improved overall program effectiveness, and could identify previously unknown sources of emissions that could be controlled to further reduce emissions.

The TCEQ believes that additional reductions will also be achieved through its public web-based access to an emission event database incorporating lower reportable quantities of VOCs beyond just the HRVOCs of most concern. This database puts facility performance regarding unauthorized emission releases at the public's fingertips. As public awareness of the number and amount of these releases increases, industry is expected to respond in a manner similar to its response to the Toxics Release Inventory program which has resulted in large reductions in Toxic emissions. EPA agrees awareness and documentation of these events should prompt industry to begin to evaluate the causes of these events and institute an enhanced program to ensure that the potential of an event is significantly minimized.

Texas believes the projected emissions for electric generating units outside the nonattainment area are probably too high. The current HGB SIP attainment demonstration modeling only excludes from the future case emissions projections for units that have formally indicated an intent to cease operation or that will be retired/reduced under agreed orders. The future projected case modeling inventory may include sources that will in fact be retired in (and/or prior to) 2007 as newer, more cost effective plants come online as Texas utilities continue the transition to a fully deregulated market. If this occurs, additional reductions could result which are not accounted for in the current SIP because the newer facilities would have lower emission rates. EPA agrees that deregulation will encourage the retirement of less efficient plants. Some of the benefit of this process may already be incorporated in the projections because Texas has projected newly permitted units will operate at 75% capacity in its projection of future emissions for electric utility emissions. It may be that newly permitted plants operate closer to full capacity as less efficient plants are curtailed or retired such that overall projected emission levels do not decrease as much. Some reductions should still occur because the newer plants will be cleaner than the older plants. A factor that weighs toward the projections of future emissions outside the nonattainment being too low is the findings of a report on emissions from offshore facilities too recent to be included in the SIP which indicates that projected emissions from these facilities may be significantly higher than what was modeled. Considering these factors together, EPA believes that NO_X emissions outside the nonattainment area are slightly if at all less than projected and provide little additional evidence the area will attain.

Texas also believes that NO_X emission projections inside the nonattainment area are overestimated. Inside the eight county nonattainment area, the Mass Emissions Cap and Trade (MECT) program for NO_X applies. For sources with permits in hand when the first cap allocations were established but which had not yet operated, TCEQ issued allowances based on the allowable emissions in the permit (so called ''allowable allowances''). Allowable allowances are those allocated to sources based on permits issued prior to the initiation of the MECT program, but not in operation for sufficient time to establish a baseline. During the interim period, until a baseline is established, sources operate complying with the ''allowable allowances.'' Then, based on the actual emissions during the baseline period, the State grants ''actual allowances.'' Because typically these facilities are not operating at their full allowable rates, but significantly below those values, a source will get fewer ''actual allowances'' than the ''allowable allowances'' it was granted based on the permit. Therefore, as these newly permitted facilities establish baselines from which to grant ''actual'' allowances, the NO_X cap in the HGB will decrease overall. The TCEQ examined the 2002 and 2003 permit database and found that only 33 to 39 percent of the allowable allowances for permitted facilities were used. The modeling was based on the ''allowable allowances'' because it was not possible to predict how much lower the actual allowances will be than allowable allowances. The number of allowable allowances is not insignificant. The TCEQ registry currently carries 18,658 allowable allowances for 2007 which could translate into a potential additional NO_X emissions reduction beyond what was modeled of up to 31 tpd if current trends for the conversion of allowable allowances to actual allowances continue. EPA agrees that as allowable allowances are converted to actual allowances, actual emissions will be less than the emissions that were modeled which should result in greater improvement in air quality than projected in the model.

In summary, EPA believes that TCEQ has provided sufficient evidence that NO_X emission levels will be lower than those projected in the model and thus, air quality improvements should be better than predicted by the model. We also believe the reductions that will occur due to collateral VOC reductions and brought about by the EMRS system and emission events data base will reduce the uncertainty in the model due to uncertainty in the VOC inventory.

Comprehensive Ozone Metrics And Ambient Trends

Based on the ambient data, the 1-hour ozone design values for the HGB area have decreased significantly from 260 ppb in 1982 to 175 ppb in 2003. Texas used this initial data to estimate a trend that demonstrated that attainment of the 1-hour standard would be reached sometime after 2020. The area's design value dropped significantly during the 1980s, then flattened out during the 1990s, hovering around 200 ppb. Design values recently have resumed their downward trend and are at the lowest values seen in at least the last twenty years. EPA notes that the 2004 design value has further decreased to 169 ppb. The current trend may be partly due to meteorological conditions in recent years, but it is almost certainly accelerated by emission reductions made since the 2000 SIP revision. If the design value continues to drop at a rate comparable to that seen in the most recent five-year period, then attainment would occur sometime around 2010. But the amount of emissions reductions is expected to increase each year until 2007 as a result of rules adopted in the

2000 SIP revision and in this SIP revision. Consequently, the design values are expected to decrease more rapidly as 2007 approaches. This simplistic analysis alone by no means proves the area will attain the standard by 2007, but EPA agrees the recent design value trends are consistent with reaching attainment by 2007.

Alternative Design Value And Addressing Short-Term Excursions

As discussed previously, the attainment strategy is based on a two pronged approach, control of routine emissions and a short-term limit to control emission events. The TCEQ believes the traditional modeling does not replicate ozone produced by the sudden sharp increases in HRVOC emissions that can occur in the HGB area due to non-routine emission releases. TCEQ argues that this technical deficiency provides an explanation for why the model's peak simulated ozone concentrations were all below the HGB area's design value in 2000. The actual design value calculated for the years 1999–2001 was 182 ppb, while base case simulated peak ozone concentrations were below 160 ppb on every day but August 31st. The TCEQ believes that the influence from short-term releases should be removed from the area's design value to determine the design value based on routine emissions. This alternative design value theoretically will more closely correspond to the routine urban ozone formation captured by the model. To remove the influence of short-term releases, TCEQ applied Blanchard's technique (Statistical Characterization of Transient High Ozone Events Interim Report; December 21, 2001) to the 1999–2001 AIRS data. This technique uses a threshold of a 40 ppb rise in ozone concentration in 1 hour to distinguish between sudden rises in ozone from the more typical case where ozone increases more gradually. Removing all days with identified sudden ozone concentration increases (SOCI), an alternate design value of 144 ppb was calculated by TCEQ. The base case includes seven days with modeled peak ozone greater than 144 ppb, so the modeled peaks, in fact, correspond well with the (non-SOCI) design value and in fact the model may be over-predicting the ozone resulting from routine emissions. If the model is over-predicting the ozone due to routine emissions in the base case, then it is likely the model is over-predicting the ozone due to routine emissions in the future case projections providing additional evidence that the control strategy will sufficiently reduce the ozone from routine emissions.

EPA considers the alternative design value approach one tool in evaluating the possible impact of non-routine emission releases, particularly releases of HRVOCs on the design value. By removing the days that have rapid ozone formation and therefore are possibly the result of large releases, it is possible to get a sense of the potential impact of large emission releases on the design value. We are not convinced, as yet, that all occasions where ozone rises by 40 ppb from one hour to the next are caused by releases. Some of these events could be caused by continuous plumes of ozone sweeping across a monitor as winds shift direction. Wind shifts are a common occurrence in the HGB area and are likely responsible for some of these SOCI events. The TCEQ analysis also did not screen out widespread exceedences unlikely to be the result of a non-routine event. Still, we agree that emission events do impact the design value to a degree that is difficult to quantify. Therefore, we agree that considering the alternative non-SOCI design value provides additional evidence that the future design value will reach the standard in the future case as Texas has developed a strategy to control both routine and event emissions, thus reducing both contributions to the design value.

Wildfire Activity: In 2000, there was an unusually large amount of wildfire activity in Southeast Texas due to drought conditions and extreme temperatures in the August-September time frame. This is documented in Section 3.7.2 of the SIP that shows that more than 5 times as many acres burned in 2000 as in any of the other years between 1999 and 2003. It is not expected the number and scope of fires modeled in the current SIP attainment demonstration modeling would be reasonably expected in future years. A sensitivity analysis was conducted to quantify the impact of wildfires on the future year ozone level in the HGB indicating wildfire activity does have an impact on the HGB future ozone levels (*i.e.*, 0.1 ppb to 1.7. ppb). EPA agrees that the amount of wildfire activity was unusual in 2000 and should not generally be expected in most years. Therefore, we agree that this is additional evidence that indicates improved probability that the area will attain in future years because the projected modeled emissions are higher due to wildfires than should generally be encountered in future years.

11. Is the One-Hour Attainment Demonstration Approvable?

EPA believes that the combination of photochemical modeling and other evidence (WOE) indicates that the revised control strategy will bring the area into attainment. This demonstration is based on new information not available at the time the currently approved SIP was developed and represents a significant improvement over past efforts to model Houston. Specific improvements include:

- Improved representation of Houston's complex meteorology.
- Recognition of the importance of HRVOCs.
- Recognition that HRVOCs are underestimated in the emissions inventory.
- Recognition of the potential impact of emissions variability on ozone levels.

EPA believes that the modeling projects significant improvement due to reductions in routine emissions. EPA believes TCEQ has shown through the modeling of routine emissions that the portion of the ozone due to routine emissions will be sufficiently reduced. The modeling of routine emissions does not predict attainment on all days. The circumstances that led to the very high exceedance on August 31, have been shown to be unusual and thus EPA concludes the 31st should not be used to drive the control strategy. On other days of the episode, ozone levels have been shown to be reduced to below or just slightly above the standard. The wildfires that occurred during the episode also are a rare event occurring because of the high temperatures and drought conditions. Removing the influence of wildfires from the modeling brings all of the days with the exception of August 31 within 3.8 ppb of the standard. Texas has provided evidence that additional emission reductions will occur of both VOC and NO_X. EPA particularly believes the expected additional NO_X reductions will provide additional ozone benefit that could offset the small amount the modeling of routine emissions shows the area to be above the standard. The additional reductions in VOC expected from collateral reductions due to the HRVOC rules and due to the implementation of the EMRS system and the event reporting data base should at least partially mitigate any errors in the non-HRVOC inventory used for the attainment modeling.

The model's under-prediction of high ozone levels using routine emissions have been examined by TCEQ. TCEQ has proposed that two phenomena (routine and non-routine emissions) drive the HGB design value and that it is appropriate to estimate an alternative design value that does not include the effects of non-routine emissions. If

TCEQ's estimated alternative design value (144 ppb) is an accurate representation of the design value due to routine emissions, then the control strategy modeling should reduce ozone levels due to routine emissions below the ozone standard. TCEQ addresses the non-routine emissions with the short-term limit that is expected to reduce the contribution to the HGB area's ozone level due to non-routine emissions such that non-routine emissions should not occur frequently enough at sensitive locations and times to impact the area's attainment of the 1-hour standard. As discussed in the TSD, the alternative design value probably overestimates, to some degree, the impact of short-term releases but still provides evidence that the current strategy to reduce routine emissions should be successful in addressing that portion of the 1-hour problem due to routine emissions and supports TCEQ's two pronged approach to achieving attainment of the 1-hour standard.

Finally, EPA believes the evaluation of ambient data trends indicates that the area is on a track that is consistent with achieving attainment of the one-hour standard by 2007.

B. New Control Measures

1. What Are the New Control Measures in These SIP revisions?

TCEQ has adopted the following new control measures since the previously approved SIP revision:

- Annual Cap on HRVOC emissions
- Hourly (short-term) limit on HRVOC emissions
- Improved requirements for HRVOC fugitive emissions
- Requirements for Portable Gasoline containers

2. What Are the Annual Cap and Short-term Limit on HRVOC emissions?

As discussed in Section II.A.1, Texas relied primarily on two sets of modeling in developing its control strategy. One set of modeling, performed by TCEQ, is largely a traditional model formulation that examines the routinely variable emissions which occur in the HGB area. Through this modeling, TCEQ established that NO_X emissions would not have to be reduced as much as previously planned and routine emissions of highly-reactive VOC emissions would have to be reduced. Through the second set of modeling, examining the impact of large non-routine releases of HRVOCs, it was established that the frequency and magnitude of large non-routine releases of HRVOCs should also be reduced.

To reduce the routine emissions of highly-reactive VOCs, Texas adopted an HRVOC emissions cap-and-trade (HECT) program. This program establishes an annual cap on emissions of ethylene, propylene, butadiene and butenes from cooling tower heat exchange systems, flares, and vent gas streams in Harris County. The rules establishing the cap-and-trade system are contained in 30 TAC Chapter 101, Subchapter H, Division 6. The rules establishing the monitoring and record keeping necessary to determine compliance with the HECT are contained in 30 TAC , Chapter 115, Subchapter H. EPA has reviewed the monitoring rules and proposed approval of the Chapter 115 rules. (See E-Docket R6–OAR–2005–TX–0014) EPA is reviewing the HECT program rules with respect to EPA's Economic Incentive Program guidance and a separate proposed rule is being developed. (See E-Docket R06–OAR–2005–TX–016) Because the emission reductions achieved by the HECT program are relied on in the attainment demonstration, EPA cannot finalize an approval of the attainment demonstration unless or until the HECT program and the Chapter 115 rules have been approved. In this document, we discuss how the controls on HRVOCs have been modeled and support the attainment demonstration.

In projecting the HRVOC emissions that would occur after the HECT annual cap was implemented, TCEQ included a 5 percent safety factor in the attainment demonstration modeling. In other words, rather than model the levels established by the cap, Texas included 5 percent additional emissions of HRVOCs in the model. This safety factor was necessary because of the uncertainty that is introduced into the modeling by using an annual cap to achieve a short-term standard such as the National Ambient Air Quality Standard for ozone. On any given day more sources could be operating above their annual average emissions than below their annual average emissions. The 5 percent safety margin provides some room to account for this day-to-day variation in routine emissions.

As discussed previously, a large number of scenarios were simulated in the Project H13 work, examining the impact of releases of various sizes, times and locations. This study demonstrated that releases at the worst-case place and time of 1000 lb/hour could have a 1–2ppb impact on peak ambient ozone levels. To minimize frequency of these events, TCEQ established an hourly limit on emissions from process vents, flares, cooling towers and pressure relief devices. The hourly limit on emissions is 1200 lbs/hour and is established at §§ 115.722 and 115.761.

3. How Are the Annual Cap and the Short-Term Limit Related?

Texas has included features in the rules defining the interaction between the annual cap and short-term limit that are unique to the HECT. Typically, all emissions during the year would be counted toward compliance with an annual cap. In establishing a cap-and-trade system for the petrochemical industry in the HGB area, TCEQ felt it necessary to consider the possibility of major upsets. TCEQ believed that non-routine emissions from process upsets, while likely to occur, are not predictable and therefore could make management of emissions under an annual cap difficult. Therefore, TCEQ established in its rule that emissions above the 1200 lb/hr short-term limit are not counted toward compliance with the annual cap but rather expected to be controlled by the short term limit. TCEQ was particularly concerned about the potential situation where a single large release could force a smaller source to shut down for the remainder of the year because its allowances had been exhausted.

Although EPA agrees that a forced shutdown of smaller sources is possible, it believes that many upsets can be avoided by a source through the development and implementation of operation and maintenance plans that address start-up, shutdown and malfunction of process equipment and application of good air pollution control practices such as required by 40 CFR 60.18(d). EPA notes that application of the aforementioned procedures would significantly reduce the emissions associated with such start-up, shutdown and malfunction events and could avoid a the need for a forced shutdown. In addition, planning and management of emissions by the source including participation in the credit market should also avoid a forced shutdown while ensuring compliance with the annual cap.

Emissions above the short-term limit would still be subject to enforcement as a violation of the short-term limit, but only 1200 lbs would be reported for compliance with the annual cap during those hours where emissions exceed 1200 lbs. It is our expectation that the root cause of the conditions giving rise to the emissions above the short-term cap will be identified and corrected. Moreover, the source is still required to use good air pollution control practices consistent with the applicable NSPS (40 CFR 60.11(d)) and MACT standards or

other applicable Federal or State programs.

The structure of the Texas HECT program, which does not require emissions above the short-term limit to be counted against the long-term cap, is a significant departure from past practices for cap-and-trade programs such as the Title IV Acid Rain program and the Houston NO_X cap-and-trade programs. EPA's Economic Incentive Program guidance regarding mass emissions cap-and-trade programs indicates that all sources in the program should account for all of their emissions. See section 7.4 of the EIP Guidance. We believe, in this instance, the approach of not counting emissions above the short-term limit toward the annual cap has both advantages and disadvantages as discussed below. We are inviting comment on approving a program with this structure, as we remain concerned about excess emissions resulting from poor operation and/or poor maintenance.

We believe the structure of the TCEQ HECT rule has the advantage that it establishes a clear procedure for how emissions during non-routine events will be handled. For every hour during a large emissions event, the source will include 1200 lbs toward meeting its annual cap. This will avoid disputes about the validity of data during large emission events, when monitoring may be less reliable. The rule clearly defines the procedures to be followed during an emission event. Sources will have no choice but to ensure that at the end of the compliance period they have sufficient allowances to cover all of the emissions up to the 1200 lb limit, or else face deductions from their compliance account and other potential penalties. In addition, emissions above that level would be subject to enforcement under the short term limit.

On the other hand, the structure of the rule has the disadvantage that some of the incentive to prevent large releases is lost by excluding emissions above the short-term limit from the annual cap. In addition, some of the incentive for reducing the size of large events, when they occur, may also be lost. With the annual cap-and-trade program's exclusion of emissions above the hourly (short-term) limit, it is probable that fewer violations of the annual cap will occur than if the exclusion had not been provided. For sources that would have violated the annual cap if emissions above the short-term limit were considered, it may be harder to promote systemic changes at those sources to reduce overall emissions.

Having looked at the advantages and disadvantages, we are proposing approval of the program. We are proposing approval because, even though it provides an exclusion for non-routine emissions above short-term limit from the annual cap, it provides new enforceable limits that are an improvement on the status quo, and we believe the annual cap in conjunction with the short term limit will achieve the goals of the attainment demonstration as indicated by the modeling analysis. The annual cap should result in the necessary reductions in routine emissions and the short-term cap should result in the necessary reduction in the amount and frequency of non-routine emission events. We note that the program rules require TCEQ to audit the HECT program every three years, and facilities have to provide compliance reports annually, so it will be readily apparent if the goals of the rules are being achieved.

We believe the program will achieve the necessary reductions in routine emissions because the size of the short-term limit is such that only truly non-routine emissions will not be counted toward the annual cap. Based on evaluation of the emission rates that were modeled in the January 2003 SIP, the 1200 lb/hour limit is expected to be about ten times larger than the average hourly emission rate at the largest sources of HRVOCs. This order of magnitude difference between the short-term limit and the average annual hourly emissions ensures that sources will not routinely operate near or above the short-term limit, thus achieving the goal of reducing routine emissions.

Also, while the structure of the HRVOC rules anticipates that emission events will not be completely eliminated, EPA believes that it provides sufficient disincentives that sources will reduce the frequency and magnitude of large emissions events such that emission events would not be expected to frequently impact peak ozone levels. The Project H13 report estimated from historic information that it is probable that at least one event will occur annually at a time and location to impact peak ozone. This indicates that while emission events are frequent in the Houston area, emission releases at the place and time that impact peak ozone do not occur nearly as frequently. As noted elsewhere, it is possible that events are more frequent than found in the project H13 report as past monitoring practices may not have detected all releases.

It is necessary to reduce the frequency of emission events so that emission events do not interfere with attainment of the 1-hour NAAQS, which only allows an average of one exceedence per year. Based on the study, we believe the hourly emission limit will achieve this goal. After the institution of the short term limit, EPA expects that emissions events impacting peak ozone levels will be reduced in frequency to fewer than one per year. The frequency of emission events will be reduced as facilities take actions to prevent violations of the short term limit such as adding additional flare gas recovery capacity so more releases can be captured and routed back to the process. Sources that fail to take appropriate actions and which violate the short term limit will be subject to enforcement. While events may occur that impact ozone levels at other locations than where the peak ozone level occurs, these events, because they are occurring in areas with lower ozone levels, would not be expected to impact attainment of the 1-hour NAAQS.

Again, EPA recognizes that the approach of providing this partial exclusion for emissions above the short-term cap is a departure from practices in other cap and trade programs such as the acid rain program and our guidance. We currently believe this approach is only warranted in consideration of the Houston area's unique situation that combines an extensive petrochemical complex and the availability of the extensive data and analysis that were generated by the intensive ozone study, TxAQS 2000 and in conjunction with a short-term limit. Consideration of this novel approach is warranted in order to balance the need to reduce both routine and upset emissions of HRVOC, but also recognizes that large upset emissions may never be completely eliminated in the petrochemical industry. Because of the uniqueness of this approach, however, we invite comment on our proposed approval of this facet of the Texas plan.

4. Can Reductions in Less-reactive VOCs Be Made Instead of Reductions in HRVOCs?

One feature of the Texas rules for capping HRVOCs is that sources can make reductions in other less-reactive VOCs to generate allowances for the HRVOC cap. The VOC reductions are used to generate emission reduction credits (ERCs), in accordance with the Emission Credit Banking and Trading Program, referred to as the ERC rule, established at 30 TAC Chapter 101, Subchapter H, Division 1. These ERCs can then be converted to allowances under the HECT program. The amount of allowances is determined based on the ratio of the reactivity for the speciated VOCs being reduced to the

reactivity of an HRVOC. Reactivity values are obtained from the Maximum Incremental Reactivity Scale (MIR), California Code of Regulations, Title 17, Chapter 1, Section 94700, concerning MIR values for Compounds. The amount of allowances that can be generated is limited to 5% of a facility's cap. To generate less-reactive VOC emission reduction credits, sources must meet the same monitoring requirements for the less-reactive VOC streams that are required for HRVOCs streams.

As mentioned earlier, EPA is evaluating the HECT rule in a separate **Federal Register** notice being developed concurrently. In addition, EPA is evaluating TCEQ's ERC rule in a separate **Federal Register** also being developed concurrently. (See E-dockets R06–OAR–2005–TX–0016 and R06–OAR–2005–TX–0006). Since this attainment demonstration depends on the reductions achieved by the HECT program, we cannot approve the attainment demonstration unless the HECT rules are first approved. Also, the conversion of ERCs to HECT allowances will not be approved until the underlying ERC rules are approved.

Below we describe the impact of the conversion of allowances based on the MIR scale on the attainment demonstration. EPA has generally classed VOCs into two groups: reactive and non-reactive. All reactive VOCs have traditionally been treated equally for regulatory purposes. The findings of the TxAQS study, indicate that reactivity of certain chemicals and their prevalence in the HGB area are causing a disproportionate impact on ozone levels in the area. Thus, these HRVOCs were targeted for control. Texas is making an allowance for a small increase in HRVOCs (up to 5%) above the new emissions levels to be offset with larger reductions in less-reactive VOCs. Modeling sensitivity analyses were performed by the University of Texas and documented in a report, titled ''Survey of Technological and Other Measures to Control HRVOC Event Emissions.'' In this report, trades of less-reactive VOCs much larger than would be allowed with the 5% cap were considered. In the sensitivity runs, the impacts ranged from a 2.1 ppb increase to a 3 ppb decrease in the peak ozone, depending on the episode day and the assumptions made about the less-reactive chemical that was reduced. The researchers looked at the impact of adding between 15 and 33 tpd of HRVOC to the model while removing the requisite amount of less reactive VOCs. Under the rule, capping trades at a 5% increase in highly reactive VOCs, an increase of less than 2 tpd of HRVOCs would be all that could be allowed. Therefore, the impact of the actual program will be quite small.

We believe that the generation of HRVOC allowances of up to 5% of a sources annual cap using reductions in less-reactive VOCs will not interfere with the area's ability to attain the NAAQS. We are proposing approval because the impact on the attainment demonstration will be very small. In addition, for sources that participate in the program, it will have the advantage of implementing additional source monitoring on less-reactive VOCs. Our proposed approval does not represent a general endorsement of the use of the MIR scale for use in SIPs. In this instance, with the aforementioned technical support, we believe this is an acceptable approach which is consistent with EPA's recently issued ''Interim Guidance on the Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (August 25, 2005). EPA will continue investigating how best to incorporate reactivity in the regulation of VOCs.

5. What Estimates of Flare Efficiency Are Made in the SIP Revision?

For purposes of estimating emissions for compliance with the Cap, the TCEQ rule requires companies to assume that properly operated flares achieve 99% destruction efficiency for C2 and C3 hydrocarbons and 98% destruction efficiency for all other hydrocarbons. To insure these destruction efficiencies are achieved, the TCEQ rules require sources to monitor continuously to demonstrate compliance with the operating parameters of 40 CFR 60.18. Sources not operating in compliance with 60.18 are subject to enforcement. In addition, during periods when a flare operates outside the parameters of 60.18, companies are to assume 93% destruction efficiency. EPA has proposed approval of these rules. (See E-Docket R6-OAR–2005-TX–0014) The assumptions regarding destruction efficiency impact the projected emissions in the model. TCEQ has provided the justification for these assumptions in Appendix L of the SIP. TCEQ relies on data from flare studies initiated by EPA in the early 1980's that indicate that a properly operated flare should achieve destruction efficiencies of 98%. (Flare Efficiency Study, July 1983, PB83–261644, Evaluation of Efficiency of Industrial Flares: Test Results, May, 1984, PB84–199371) These studies provided the basis for the development of 40 CFR 60.18. Texas used the data from these studies on ethylene and propylene to estimate that for these chemicals destruction efficiencies of 99% should be achieved by a properly operated flare.

Emission estimates from flares will always be a source of uncertainty because emissions from flares cannot be directly measured with today's technology. EPA is proposing to accept the estimates used for flare destruction efficiency for use in the attainment demonstration because the estimates are based on the best information available. We, however, remain concerned about the uncertainty created in the attainment demonstration by having a significant source of emissions which cannot be directly measured.

We note that some operating parameters for flares such as steam and air assist ratios are not covered specifically by 40 CFR 60.18 but some studies have indicated these parameters can impact flare efficiency. Because of the prevalence of flares in the HGB area, we believe Texas should strongly consider, for both flares in HRVOC service and general VOC service, requirements for monitoring steam and air assist ratios to insure that operators maintain these parameters, not covered by 40 CFR 60.18, in a range to insure optimum combustion. We also encourage TCEQ to pursue new technology such as the Fourier Transform Infrared Spectrophotometer which would eventually allow the direct measurement of destruction efficiency in the field.

6. How has the Texas Leak Detection and Repair Program Been Strengthened?

For a number of years, TCEQ has implemented a leak detection and repair program as part of its program to control VOCs. When TCEQ determined that additional reductions of HRVOCs were needed, they established a number of new requirements for leak detection and repair of components in HRVOC service. The changes include, among other things, the following improvements:

- Inclusion of connectors in the program.
- Inclusion of other non-traditional potential leak sources such as heat exchanger heads and man-way covers.
- Elimination of allowances for skipping leak detection periods for valves.
- Requirements for third party audits to help insure that effective leak surveys and repairs are conducted.
- Requirements that ''extraordinary'' efforts be used to repair valves before putting them on the delay of repair list.

For a full discussion of the improvements to the program, see the Technical Support Document for this action. We have proposed approval of

these changes. (See E-Docket R6-OAR–2005-TX–0014)

7. How Have the Benefits of the Leak Detection and Repair Program Been Projected?

The nature of fugitive emissions introduces a great deal of uncertainty in estimating fugitive emission rates. Much of this uncertainty is unavoidable given the impossibility of estimating emissions from each leaking component. In this SIP revision, TCEQ has increased the amount of modeled HRVOC emissions above reported levels based on ambient measurements as described previously. As part of this adjustment, fugitive emissions were also increased above reported levels. Below we explain why this increase in the modeled emissions to match ambient measures may have been necessary because of possible problems with assumptions regarding control efficiency and rule effectiveness for fugitive emissions that were made in the State's emissions inventory. EPA also believes these past practices are being improved to reduce the uncertainty of future estimates.

Control Efficiency: Past TCEQ emission inventory practices allowed companies the option of using average Synthetic Organic Chemical Manufacturing Industry emission factors in combination with estimated control efficiencies to estimate emissions. Since this approach does not employ the data on the number of leaking components or the concentrations of leaks, it potentially misjudges emissions. The control efficiencies TCEQ has allowed sources to assume are higher than EPA has projected for similar control programs. For example, in past estimates for a similar program to the Texas program, EPA had estimated a 92% control efficiency, where Texas has allowed sources to assume a 97% control efficiency. See the TSD for a more complete discussion. The adjustment to the inventory based on ambient measurements could account for discrepancies in assumed control efficiencies.

Rule Effectiveness: Rule effectiveness is a concept that tries to account for difference between reported emissions and actual emissions. Sources generally assume ideal program implementation in reporting emissions when actual program implementation may be less than ideal. In the case of fugitive emissions, a 100% rule effectiveness would assume that facilities are completely accurate in their component counts and detect and repair all of the leaking components. Clearly, in practice, 100% effectiveness is only a goal that can be strived for. Again, the adjustment to the emissions inventory based on ambient measurement is necessary, in part, due to rule effectiveness issues.

It is EPA's understanding that, prior to adjusting the inventory, TCEQ assumed a rule effectiveness of 100% for sources that participated in its special inventory.[3] Because of the number of sources in the special inventory, it is believed that the rule effectiveness is nearly 100%. EPA's National Enforcement Investigations Center has performed leak surveys at refineries and has generally found more leaking equipment than estimated by facilities. Surveys at 17 refineries across the country found on average that facilities found 1.7% of their components to be leaking. Where as the NEIC surveys found on average 5% leaking components. Emissions based on the NEIC surveys were 2.4 times as high as the emission estimates based on the facility surveys.

Taken together, the control efficiency and rule effectiveness determine the overall program effectiveness. TCEQ's addition of imputed emissions based on actual ambient measurements is one way to account for the program effectiveness issues described above and other potential problems such as leaks from non-traditional components such as heat exchanger bonnets and man-way covers.

The changes to the program will make strides to address these issues. First, TCEQ has expanded the leak detection and repair program to include connectors and non-traditional components. This will increase the probability that leaks from unsurveyed equipment will be detected and repaired. Second, TCEQ is requiring, starting with the 2004 inventory, that all sources use correlation equations instead of assuming a control efficiency. Correlation equations are the most sophisticated approach to estimating emissions, short of bagging studies on each valve. As a result, future emission estimates will be based on the actual leaks found. In addition, the institution of third party audits should improve the performance of leak survey technicians so that more leaks are detected and repaired. Finally, more valves will be repaired as companies are required to employ ''extraordinary efforts'' to repair a leaking valve before allowing the repair to be delayed until the next shutdown. New technologies for repair, coming under the heading of ''extraordinary efforts'' should greatly reduce the number of valves that go unrepaired.

In summary, EPA believes that part of the reason it was necessary to adjust the base inventory to increase the emissions above reported levels based on ambient measurements, was to account for problems in assumptions for control efficiency, rule effectiveness and leaks from non-traditional components. The changes to the program will address each of these areas. EPA believes that the combination of the improvements to the program and the institution of third party audits can result in the projected 64% reduction in emissions. The addition of new components to the program and the requirement for extraordinary repair effort will improve the control efficiency. The requirement for third party audits and other changes will improve the rule effectiveness. EPA's policy on credit for rule effectiveness improvements requires that States commit to perform a study to determine if the rule effectiveness improvements are in practice realized. In response to comments on this issue, TCEQ has committed to conducting a rule effectiveness study based on the third party audit program after the program has progressed and data is available. EPA notes the first third party audits will be completed December 31, 2005. EPA would expect a rule effectiveness study summarizing the results of the first third party audits could be completed during the 2006 calender year. Using the rule effectiveness study and the results of the improved emission inventory estimates based on correlation equations, Texas will be able to determine if the emissions targets that have been modeled have been reached. In addition, this data will be useful in developing the 8-hour attainment plan.

EPA is proposing to approve the emission reductions that have been projected for the improved leak detection and repair rules. Our approval is based on the improvements to the fugitive rule and Texas' commitment to perform a rule effectiveness study and use improved emission inventory techniques to estimate future emissions to confirm the effectiveness of the program.

8. What Are the Requirements for Portable Gasoline Containers?

TCEQ has adopted standards for portable fuel containers sold in the State which provide requirements to prevent leaks and spills. EPA has approved the TCEQ rules on February 10, 2005 (70 FR 7041). TCEQ has projected 2.9 tons/day

[3] The special inventory was developed by asking the largest facilities in the HGB area to provide daily emission estimates for the time period of the TxAQS 2000 study.

of emission reductions. We are proposing approval of the modeling with the inclusion of these projected emission reductions.

C. Revised Control Measures

1. What Control Measures Have Been Revised or Repealed?

Texas has revised a number of control strategies that were included in the approved State Implementation Plan. A description of the revisions follows.

Industrial NO_X Controls: Texas revised its NO_X rules to relax the controls from a nominal 90% control to 80% control. Both the 90% level of control and the 80% level of control are far more stringent than the levels of control EPA previously approved as meeting the NO_X RACT requirements of Section 182 (65 FR 53172, September 1, 2000). Therefore, the 90% level of control is a discretionary control measure as considered in the Phase 1 rules because the 90% level of control was not mandated by Subpart 2 of the Clean Air Act but was chosen as necessary for the area to demonstrate attainment of the 1-hour standard. Discretionary measures are not subject to the antibacksliding provisions of the Phase 1 rule, but any revisions of such measures are subject to Section 110(l) of the Act. In Section II.E., we discuss the revised plan's compliance with Section 110(l) of the Act. In Section II.B., we discuss why we believe, taken together with other changes, the plan continues to demonstrate attainment of the 1-hour standard. In section II.D., we explain why we believe this measure is not necessary to meet the Act's RACM requirement. For the above reasons, we are proposing approval of the revisions to the TCEQ Chapter 117 rules reducing the stringency from a nominal 90% control to a nominal 80% control.

In addition to a change in stringency of the rules, TCEQ made a number of less significant changes that are discussed in appendix 1 of the TSD. These changes include the repeal of outdated sections, rule clarifications, stylistic changes in response to Texas Register guidelines, minor changes to monitoring requirements, corrections to cross references and improved recordkeeping requirements for consistency with Title V requirements. We are also proposing approval of these less substantive changes.

Vehicle Inspection and Maintenance Program in Three Rural Counties: TCEQ has dropped the requirement for I/M in Waller, Liberty and Chambers Counties. These counties are not included in the urbanized area and are therefore not required by Subpart 2 of the Act to implement an I/M program. Therefore, I/M in these three counties is a discretionary measure that is not subject to the antibacksliding provisions of the Phase 1 rule, but any revisions to the SIP approved I/M requirements must comply with section 110(l) of the Act. In Section II.E., we discuss the revised plan's compliance with Section 110(l) of the Act. In Section II.B we discuss why we believe, taken together with other changes, the plan continues to demonstrate attainment of the 1-hour standard. In section II.D., we explain why we believe this measure is not necessary for the area to meet the Act's RACM requirement. Therefore, EPA is proposing to approve the repeal of the I/M program for these three counties.

The TCEQ also made a number of nonsubstantive changes to the I/M program that are discussed in Appendix 2 of the TSD. These changes were corrections to cross references and stylistic changes. We are also proposing approval of these additional nonsubstantive changes.

Removal of Small, Spark-Ignition Engine Operating Restrictions: TCEQ has dropped this requirement which would have prohibited commercial lawn services from operating during the morning hours. This measure is not required by Subpart 2 of the Clean Air Act. Therefore, it is a discretionary measure that is not subject to the antibacksliding provisions of the Phase 1 rule, but any revision to the approved SIP must comply with section 110(l) of the Act. In Section II.E., we discuss the plan's compliance with Section 110(l) of the Act. In Section II.B., we discuss why we believe, taken together with other changes in the plan, the revised plan continues to demonstrate attainment of the 1-hour standard. In section II.D., we explain why we believe this measure is not necessary to meet the Act's RACM requirement. Therefore, EPA is proposing approval of this change.

Speed Limit Strategy from a 55 mph Maximum Speed Limit to a 5 Mile Reduction in Speed Limits from Previous Levels: The Texas legislature repealed TCEQ's authority to implement speed limits for environmental purposes. Texas Department of Transportation had already reduced speeds in the HGB area by 5 mph from 70 mph to 65 mph and from 65 to 60. These reductions in speed limits of 5 mph remain in place, but the reductions that would have been achieved by reducing speed limits on all roads further to 55 mph will not be achieved. Calculated using Mobile 6, the reductions from this measure are much smaller than as calculated under Mobile 5 in the previous SIP. This measure is not required by Subpart 2 of the Clean Air Act. Therefore, it is a discretionary measure that is not subject to the antibacksliding provisions of the Phase 1 rule, but any revision to the approved SIP must comply with section 110(l) of the Act. In Section II.E., we discuss the plan's compliance with Section 110(l) of the Act. In Section II.B., we discuss why we believe, taken together with other changes in the plan, the revised plan continues to demonstrate attainment of the 1-hour standard. In section II.D., we explain why we believe this measure is not needed to meet the Act's RACM requirement. For the above reasons, EPA is proposing approval of this revision of the State's plan.

Removal of the Vehicle Idling Restriction: This measure that would have prohibited prolonged idling of heavy duty diesel vehicles has been repealed. This measure is not required by Subpart 2 of the Clean Air Act. Therefore, it is a discretionary measure which is not subject to the antibacksliding provisions of the Phase 1 rules, but any revision to the approved SIP must comply with section 110(l) of the Act. In Section II.E., we discuss the plan's compliance with Section 110(l) of the Act. In Section II.B., we discuss why we believe, taken together with other changes in the plan, the revised plan continues to demonstrate attainment of the 1-hour standard. In section II.D., we explain why we believe this measure is not necessary to meet the Act's RACM requirement. For the above reasons, we are proposing approval of this change.

Revision to Delay the Compliance Date for Gas Fired Water Heaters and Small Boilers: This rule is not being repealed, but its compliance date has been delayed from December 31, 2004 to January 1, 2007. This rule requires new water heaters sold in Texas to achieve lower NO_X emission rates. A delay in the compliance date results in reduced emission reductions because there is less time for old water heaters to be replaced with new water heaters through normal turnover. Texas has accounted for these lost reductions in its attainment modeling. This measure is not required by Subpart 2 of the Clean Air Act. Therefore, it is a discretionary measure that is not subject to the antibacksliding provisions of the Phase 1 rule, but any revision to the approved SIP must comply with section 110(l) of the Act. In Section II.E., we discuss the plan's compliance with Section 110(l) of the Act. In Section II.B., we discuss why we believe, taken together with other changes in the plan, the revised plan continues to demonstrate attainment of the 1-hour standard. In section II.D., we explain why we believe earlier

implementation of this measure is not necessary to meet the Act's RACM requirement.

We are not proposing approval of this change to the rules for control of water heaters at this time. It is a Statewide rule and the changes to the rule impact other areas of the State and we have not yet analyzed the above issues in areas of the State other than Houston. We note only that the changes to the water heater rules do not impact the approvability of the Houston mid-course review SIP revision.

Revisions to the Voluntary Measures: Texas has revised the voluntary mobile emissions program (VMEP) portion of the State Implementation Plan. This portion of the plan, which was approved in 2001, was projected to achieve 23 tpd of emission reduction through various voluntary and often innovative measures. Experience and the recalculation of the benefits with Mobile 6 has resulted in a much lower expectation for the program which now is expected to only achieve 10.6 tpd of emission reductions. The details of changes to the program are contained in appendix O of the SIP. These measures are not required by Subpart 2 of the Clean Air Act and therefore, are discretionary measures that are not subject to the antibacksliding rules provisions of Phase 1 rule, but revisions to the approved 1-hour SIP must comply with section 110(l) of the Act. In Section II.E., we discuss the plan's compliance with Section 110(l) of the Act. In Section II.B., we discuss why we believe, taken together with other changes in the plan, the revised plan continues to demonstrate attainment of the 1-hour standard. In section II.D, we explain why we believe these measures are not necessary for the area to meet the Act's RACM requirement. For the above reasons, EPA is proposing approval of the revisions to the VMEP measures.

D. Reasonably Available Control Measures

1. What Are the RACM Requirements?

Section 172(c)(1) of the Clean Air Act requires that each nonattainment plan provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards. EPA has provided guidance interpreting section 172(c)(1) of the Act. See 57 FR 13498, 13560, April 16, 1992. In that guidance, EPA indicates that potentially available control measures, which would not advance the attainment date for an area or contribute to reasonable further progress, would not be considered RACM under the Act. EPA's guidance also indicates that States should consider all potentially available measures to determine whether they are reasonably available for implementation in the area including whether or not they would advance attainment. Further, the guidance calls for states to indicate in their SIP submissions whether measures considered are reasonably available or not, and if so the measures must be adopted as RACM. Finally, the guidance indicates that States could reject potential RACM measures either because they would not advance the attainment date or would cause substantial widespread and long-term adverse impacts or for various reasons related to local conditions. See ''Guidance on Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas,'' John Seitz, Director, Office of Air Quality Planning and Standards, November 30, 1999.

2. How Has Texas Insured With This Plan Revision That All RACM Are Being Implemented?

In EPA's November 14, 2001 notice approving the plan for the HGB nonattainment area, EPA approved the analysis showing the plan was implementing all Reasonably Available Control Measures. The NO_X reduction requirements of that plan were so substantial no additional RACM measures could be identified in time for adoption as a part of that plan and the State had to make an enforceable commitment to adopt additional NO_X measures which were expected to be feasible in the near future. Now, based on the findings of the mid-course review, Texas has determined that the NO_X reductions necessary for attainment, while still substantial, are not as great and that control of HRVOCs is a more effective way of reducing ozone. In section II.A. of this notice, we discuss how EPA found that the revised plan for HGB will achieve attainment of the 1-hour standard, based on the controls that will be in place by the beginning of the ozone season of 2007. Both NO_X and HRVOC controls, necessary for attainment, will be fully implemented the last year of the strategy. In the last year of the strategy, the point source controls alone will achieve an estimated 39 tpd of NO_X reductions (based on review of the TCEQ's Mass Cap-and-Trade Registry). Reductions in on- and off-road emissions will also occur. Therefore, to advance attainment, additional reductions on the order of 39 tpd would have to be achieved before the ozone season of 2006. In Section 5.4 of the State Implementation Plan, Texas explains why even with the repeal and revision of the measures described in Section II.C., Texas believes the RACM requirement is still being met. What follows is a summary of EPA's evaluation of each of the revisions.

Industrial NO_X Controls: TCEQ has relaxed the NO_X rules for a number of NO_X point source categories. The original controls achieved a nominal 90% reduction in point source emissions, with some categories reducing more than 90% and some less than 90%. The new rules, being considered here today, achieve a nominal 80% control. It is a convenient short hand to refer to the control levels as 90% or 80% even though this does not accurately state the level of reduction for individual source categories. TCEQ has argued that the 90% controls would not advance attainment because the current 80% control levels are scheduled to be implemented in 2007 and it would not be reasonable to expect that a more stringent 90% control could be implemented faster to advance attainment. EPA previously agreed that the most expeditious schedule for the 90% controls would be by 2007. EPA continues to believe that to be the case so that implementation of 90% controls would not advance attainment and therefore is not RACM. Even at the 80% control level, the TCEQ rules are still similar in stringency to the control levels implemented in California which have generally been considered the most stringent in the country. (See the Technical Support Document for more information)

Repeal of the I/M Program in 3 Rural Counties: Texas has chosen to reduce the scope of its I/M program from eight counties to five counties. The three counties that are being dropped are Chambers, Liberty and Waller Counties. These are the most rural counties in the nonattainment area. The program was scheduled to be implemented in 2005. Using Mobile6, Texas has estimated that the program would achieve 0.87 tpd of emission reductions which is a smaller reduction estimate than the Mobile 5 estimate included in the 2000 SIP and is less than .2% of the projected emissions for the area in 2007. Because of the small amount of emission reductions, implementation of I/M in these three counties would not be

expected to advance attainment. Thus, EPA proposes that implementation of I/M in these three counties is not required to meet the RACM requirement.

Removal of Small Spark Operating Restrictions: This measure would prohibit lawn and garden service contractors for operation in the morning hours from 6 a.m. to 10 a.m.—a time during which emissions have been found to contribute most significantly to ozone production. This measure was due to be implemented in 2005. Texas decided that attainment could be reached without the implementation of this measure. The measure was estimated to achieve the equivalent of 7.7 tons/day of NO_X emission reductions. As such, its implementation would not advance the attainment date. Therefore, EPA believes the morning lawn service ban should not be considered a reasonably available control measure for the HGB area.

Speed Limit Strategy: The approved SIP provides for the speed limits in the eight county area to be reduced to 55 mph. Later, TCEQ decided to delay the implementation of the 55 mph until 2005, but would implement speed limits that are 5 mph lower than the previous speed limits, lowering 70 mph speed limits to 65 mph and 65 mph limits to 60 mph starting in 2001. In the 2004 SIP revision, TCEQ decided to make permanent the interim limits and forgo lowering the speed limits to 55 mph. Based on Mobile 6, lowering speeds all the way to 55 mph would be expected to reduce emissions 2–3 tons/day. This is a lower estimate of emission reductions than predicted by Mobile 5 in the 2000 SIP revision. This small amount of emission reduction would not advance attainment in the Houston area and therefore this measure is not considered RACM.

Vehicle Idling Restriction: Texas is dropping a rule that prohibits idling of heavy duty vehicles for more than five minutes in the Houston area. The measure was estimated to reduce NO_X emissions by 0.48 tpd. Texas decide that attainment could be reached without the implementation of this measure. This small amount of emission reduction would not advance attainment for the area and therefore should not be considered RACM.

Delay in Compliance for the Water Heater Rule: In this case, TCEQ still intends to implement the rule, but has delayed compliance until 2007. Since the adoption of the current rule, two American National Standards Institute (ANSI) standards (the flammable vapor ignition resistance standard and the lint, dirt, and oil standard); the United States Department of Energy (DOE) energy efficiency standard; and the EPA insulation foam ban have been implemented. The ANSI lint, dirt, and oil standard and the flammable vapor ignition resistance standard were effective on July 1, 2003, and were established for gas-fired water heater safety reasons. The DOE energy efficiency standard was effective on January 20, 2004. The EPA foam ban was effective on January 1, 2003, and affects gas-fired water heaters, as water heater manufacturers have historically used hydrochlorofluorocarbon as a blowing agent for creating foam insulation. The implementation of these standards has delayed the progression of the water heater technology and design. Therefore, a design that meets the 10 ng/J emission limit in the Texas rule will not be available for sale in the market by the January 1, 2005.

Because the new federal standards affect the design of new water heaters and have made it impractical for the industry to meet Texas's NO_X limits for water heaters in a timely manner, EPA agrees that this measure is being implemented as expeditiously as is technically practicable. In other words, earlier implementation is not technically practicable and therefore, since it would be infeasible, it would not advance attainment and would not be RACM.

E. Section 110(l) Analysis

1. What Does Section 110(l) Require?

Section 110(l) of the Clean Air Act says:

''Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

2. How Has Texas Shown These Revisions Do Not Interfere With Attainment of the 8-hour Standard?

Texas must consider whether the new strategy which relies on fewer reductions of NO_X and more reductions of VOC will interfere with attainment or reasonable further progress or any other applicable requirement under the Act. A strict interpretation of this requirement would allow EPA to approve a SIP revision removing a SIP requirement only after determining, based on a completed attainment demonstration, that it would not interfere with applicable requirements concerning attainment and reasonable further progress. As discussed above, Texas has completed a revised attainment demonstration with respect to the 1-hour standard. Attainment demonstrations for the 8-hour standard are not due for several years. EPA recognizes that prior to the time areas are required to submit full attainment demonstrations for the 8-hour ozone standard, this strict interpretation could prevent any changes to the SIP control measures. EPA does not believe this strict interpretation is necessary or appropriate.

Prior to the time that attainment demonstrations are due for the 8-hour ozone standard, it is unknown what suite of control measures a State will choose to adopt for a given area to attain that standard. For example, different mixes of NO_X or VOC and industrial or mobile source controls may result in attainment. During this period, to demonstrate no interference with the 8-hour NAAQS, EPA believes it is appropriate to allow States to substitute equivalent emission reductions to compensate for the control measures being removed from the approved SIP. EPA believes preservation of the status quo air quality during the time new attainment demonstrations are being developed will prevent interference with the States' obligations to develop timely attainment demonstrations and to attain as expeditiously as practicable.

''Equivalent'' emission reductions mean reductions which result in equal or greater air quality benefit than those reductions being removed. To show the compensating emission reductions are equivalent, modeling or adequate justification must be provided (EPA Memorandum from John Calcagni, Director Air Quality Management Division, to the Air Directors in EPA Regions 1–10, September 4, 1992). The compensating emission reductions must represent actual, new emission reductions achieved in a contemporaneous time frame in order to preserve the status quo. In addition, the emission reductions must be permanent, quantifiable, and surplus to be approved into the SIP.

As discussed previously, Texas has chosen to substitute actual, reductions of HRVOCs for some of the NO_X reductions in the approved SIP. This approach is evaluated below with respect section 110(l) and the criteria described above.

Contemporaneous: While contemporaneous is not defined in the Clean Air Act, a reasonable interpretation is that the compensating control measures be implemented within one year of the time frame for the

control measure being replaced. In this case, the new control measures being used as substitutes are being implemented in virtually the same time frames as the measures being replaced. The new measures have the following compliance dates: tighter controls on HRVOC fugitive emissions—March 31, 2004, HRVOC cap-monitoring 2005, full cap compliance 2006, gas can rule-2007. The measures being replaced, which are listed in section II.D., with the exception of the vehicle idling ban, all had compliance dates in the approved SIP of 2005 or later. In particular the largest emission reduction change by far, the difference between 90% and 80% control on NO_X, was not scheduled to be put in place until 2007. It is worth noting that reductions that would have been achieved by controls adopted to meet the enforceable commitment to reduce NO_X did not have a specified compliance date. The commitment only provided that the measures would be adopted by May 2004 and compliance would be achieved as expeditiously as possible but no later than the beginning of the ozone season in 2007. Therefore, it can be assumed the emission reductions from the NO_X enforceable commitments, had they been implemented, would not have occurred before the 2005–2006 time frame, a time frame similar to that for the measures to control HRVOCs which Texas has adopted as a substitute. With regard to the vehicle idling restrictions, the compliance date for this rule was May of 2001. It was projected to achieve 0.48 tpd of emission reductions. It was discontinued effective December 23, 2004. The improved HRVOC fugitive controls which began implementation in March of 2004, more than offset the small reductions lost by the discontinuation of the motor vehicle idling program after December 23, 2004.

Equivalent: To demonstrate that the emission reductions were equivalent, the TCEQ used the photochemical model to demonstrate that the total collection of strategies in the current SIP revision is equivalent or better in 8-hour ozone reduction effectiveness as compared with the total collection of strategies in the SIP that was approved in 2001 including the reductions that would have occurred due to measures to meet the enforceable commitments. Several 8-hour ozone metrics were calculated. The results indicated that the revised SIP is slightly more effective in reducing 8-hour ozone than the previously approved SIP in both average relative reduction factor (0.931 vs. 0.940) and in average future design value (107 vs 108 ppb). Although some monitoring stations fare slightly worse under the new control strategy, others fare slightly better. In addition, for both peak 8-hour ozone concentration and exposure metrics, the benefits of the new strategy exceed those of the old on every day except September 6, where the old strategy is slightly better. Considering, the modeled predicted area of exceedance, however, the comparison is less clear-cut. The older strategy shows more of a benefit on six of ten days and the new strategy shows a greater benefit on three days. Both strategies indicate the same benefit on one day. In summary, EPA believes that the new strategy and the old strategy are approximately equivalent in eight hour ozone benefit, with the new strategy slightly more effective in reducing the peak ozone values and the old strategy slightly more effective in reducing the predicted area of exceedence. Taking all of the metrics into consideration and recognizing the uncertainties in the modeling, we believe that Texas has demonstrated that the new strategy is equivalent to the old strategy in 8-hour ozone benefit.

Permanent: The emission reductions from the HRVOC rules are permanent as sources will have to maintain compliance with new measures indefinitely.

Enforceable: EPA is reviewing the enforceability of the substitute measures in separate rules. The Gas Can Rule was approved on February 10, 2005, 70 FR 7041. EPA has proposed approval of the fugitive emission controls and improved monitoring requirements for HRVOCs on April 7, 2005, 70 FR 17640 . Finally, concurrent with this **Federal Register** notice EPA is proposing approval of the HECT program. In each of these rulemakings, EPA will evaluate whether the substitute rules are enforceable, considering such issues as whether the rules have adequate test methods, monitoring requirements, record keeping requirements and whether the State has adequate enforcement authority to ensure the limits are achieved. As discussed elsewhere, the revisions to the attainment plan including the NO_X rule repeals and revisions that reduce the projected amount on NO_X emission reductions cannot be approved unless final approval of the substitute rules is completed. If approved, these substitute rules will be federally enforceable and enforceable by the public through citizen suit.

In summary, we believe the substitute measures result in equivalent 8-hour benefit and that the new measures are contemporaneous, enforceable and permanent. Therefore, we believe approval of these revisions to the approved SIP will not interfere with attainment of the 8-hour standard.

3. What About Possible Interference With the 1-Hour Ozone Standard?

The 1-hour standard was revoked on June 15, 2005 for the HGB area. The approved SIP, however, committed the State to adopt control measures of 56 tpd, unless the State could show that these NO_X reductions were not needed for attainment of the 1-hour standard. We have discussed, in Section II.A., EPA's evaluation of the revised 1-hour attainment demonstration and are proposing approval of that strategy as demonstrating attainment of the 1-hour standard.

4. How Has Texas Shown These Revisions Do Not Interfere With Rate of Progress?

Texas submitted, and EPA has approved, revisions to the rate of progress plan (February 14, 2005 70 FR 7407) based on the revised strategy. These revisions will ensure that 1-hour ROP is met for each 3-year period out to the 1-hour attainment date. (See the **Federal Register** cited above for further explanation of the approved ROP demonstration.)

5. Do These Revisions Interfere With Attainment of Other Standards Besides Ozone?

The HGB area currently meets all other National Ambient Air Quality Standards besides ozone. The plan revisions being considered would not be expected to impact compliance with the CO, SO_2 or lead NAAQs as these pollutants are not affected by these rules.

The revisions to the NO_X rules do affect emissions of NO2 and thus could potentially impact attainment with the NO_2 standard. The HGB area, however, meets the NO_2 standard at today's level of NO_2 emissions and the revised plan will still reduce NO_2 emissions considerably from today's levels and thus will not interfere with maintenance of the NO_2 standard.

Similarly, the HGB area currently meets the NAAQS for PM fine. NO_X and VOCs are precursors to the formation of PM fine. The revised plan will result in additional NO_X and VOC reductions beyond today's levels. Therefore, the revised plan will not interfere with the continued attainment of the PM fine standard.

6. Do the Revisions Interfere With Any Other Applicable Requirements of the Act?

Section 110(l) applies to all requirements of the Act. Below are requirements potentially affected by TCEQ's rule change and a brief discussion of EPA's analysis.

Reasonably Available Control Technology (RACT) requirements: EPA has previously approved the NO_X and VOC rules in the HGB area as meeting the Act's RACT requirements. The revised NO_X rules remain substantially more stringent than the previously approved RACT requirements. The new HRVOC rules build on the previously approved RACT requirements. In addition, these revisions do not impact the major sources applicability cutoffs. Therefore, these revisions do not interfere with the implementation of RACT.

Inspection and maintenance programs (I/M): This revision drops three counties from the I/M program. These counties are not included in the urbanized area as defined by the Census Bureau. Thus, I/M is not required to be implemented in these counties and thus these revisions do not interfere with meeting the I/M requirements of the Act.

Air Toxics: There are no federal ambient standards for air toxics and these rules do not impact compliance with any federal MACT standards so these rule revisions do not interfere with compliance with any air toxics standards. We note that air toxic levels of butadiene and formaldehyde are expected to decrease as a result of the revised plan. Butadiene emissions are directly regulated by the new HRVOC rules. Formaldehyde is formed from ethylene in the photochemical reactions leading to ozone.

F. Enforceable Commitments

1. What Is an Enforceable Commitment?

An enforceable commitment is a written commitment that is approved into the SIP that is enforceable against the State. In the SIP approved in November 2001, there were enforceable commitments to achieve additional NO_X reductions and enforceable commitments to incorporate the latest information into the SIP.

To be enforceable, commitments must be approved as part of the SIP and, therefore, the State must have given notice and taken comment on the commitment, held a public hearing and submitted it as a SIP revision. The commitments must be specific as to the state agency's future plans for adoption of specified control measures. The dates for implementation of, or compliance with, the future to-be-adopted specified control measures must be included in the commitments and be as expeditious as practicable. If the State does not follow through with the commitment, EPA can find that the State failed to implement the SIP. Further, the public can seek enforcement of the obligations under Section 304(a) of the CAA.

2. What Were the Enforceable Commitments in the 2001 Approved SIP and Have They Been Fulfilled?

In the approved SIP, there are a number of enforceable commitments. In this section we evaluate whether these enforceable commitments have been met. The State made the following commitments which were approved in the November 2001 **Federal Register**.

- To perform a mid-course review (including evaluation of all modeling, inventory data, and other tools and assumptions used to develop this attainment demonstration) and to submit a mid-course review SIP revision, with recommended mid-course corrective actions, to the EPA by May 1, 2004.

Discussion: Texas provided the mid-course review in the December 2004 submission. It included new modeling with new more recent episodes based on the Texas 2000 study. Virtually all of the inputs to the model were updated and improved, making the 2004 SIP the best modeling ever performed for the Houston area. Additionally, the State submitted control measures that, based on the demonstration, will result in attainment of the 1-hour standard as expeditiously as practicable. Therefore, EPA believes the commitment for a mid course review has been satisfied.

- To perform new mobile source modeling for the HG area, using MOBILE6, EPA's on-road mobile emissions factor computer model, within 24 months of the model's release.

Discussion: The midcourse review modeling employed MOBILE6 for the on-road mobile source inputs satisfying this commitment.

- If a transportation conformity analysis is to be performed between 12 months and 24 months after the MOBILE6 release, transportation conformity will not be determined until Texas submits an MVEB which is developed using MOBILE6 and which we find adequate.

Discussion: This commitment was not applicable because transportation conformity was not performed during the time period.

- To adopt rules that achieve at least the additional 56 tpd of NO_X emission reductions that are needed for the area to show attainment of the 1-hour ozone standard.

See below.

- To adopt measures to achieve 25% of the needed additional reductions (56 tpd) and submit those adopted measures to EPA as a SIP revision by December 2002.

Discussion: This commitment required TCEQ to find measures to achieve an additional 14 tons/day of NO_X emission reductions and to submit adopted control measures by December 2002. In the January 28, 2003 submission, TCEQ provided the demonstration that the TERP program meets EPA's requirements as an economic incentive program and will achieve the required 14 tons/day of emissions reductions. EPA has approved the TERP program in a separate **Federal Register** action which discusses how the TERP program meets the EIP requirements (August 19, 2005, 70 FR 48647). Through the attainment year of 2007, 38.8 tons/day of emission reductions are projected for the TERP program based on a $5,000/ton cost effectiveness. The total obligation for emission reductions from TERP is 32.9 tpd. TERP originally replaced two measures: a morning construction ban (6.7 tpd NO_X equivalent) and accelerated introduction of Tier II/III equipment 12.2 tpd). After allocating 18.9 tpd from TERP to replace these two measures, the program still is projected to produce an additional 19.9 tpd of reductions which is sufficient to provide the additional 14 tpd of emissions reductions needed to meet the enforceable commitment. Thus, EPA believes the enforceable commitment to achieve 25% of the 56 tpd of NO_X reductions has been satisfied.

We note two developments with the program. The average cost effectiveness of TERP projects, to date, is $5500/ton and the Texas legislature moved to cut some of the funding for the program in the last session. TCEQ may have to shift some of the TERP funding from other areas such as Corpus Christi or Victoria, which currently meet the 8-hour ozone standard to the HGB area to insure that the emission reduction targets are met.

- To adopt measures for the remaining needed additional reductions and submit these adopted measures to EPA as a SIP revision by May 1, 2004.

Discussion: Texas determined that these additional NO_X reductions would not be necessary for the area to attain. Instead, as discussed elsewhere in this document, TCEQ has instead adopted and has begun implementing a strategy to reduce emissions of HRVOCs. EPA believes that the new strategy will attain the one-hour standard. This is further

discussed in Section II.B. regarding the review of the attainment demonstration and Section II.E regarding whether section 110(l) of the Act has been met.

• That the rules will be adopted as expeditiously as practicable and the compliance dates will be expeditious.

Discussion: TCEQ adopted its measures for the control of HRVOC first in 2002 and has revised them three times since then. The compliance dates in the rules are based on the need to develop monitoring plans, quality assurance/quality control programs, install the monitors, and develop control plans based on the monitoring results. EPA believes that the implementation of these new measures is as expeditious as practicable.

• That the State would concurrently revise the Motor Vehicle Emissions Budgets (MVEBs) and submit them as a revision to the attainment SIP if additional control measures reduce on-road motor vehicle emissions. Texas stated that measures which could limit future highway construction, such as growth restrictions, may not be included.

Discussion: Texas has revised the mobile source budget to account for TERP reductions and other adjustments to the mobile source emissions estimates.

Summary: Based on the above analysis, we propose that TCEQ has satisfied the requirements of the enforceable commitments contained in the approved HGB SIP.

G. Motor Vehicle Emissions Budgets

1. What Is a Motor Vehicle Emissions Budget and Why Is It Important?

The MVEB is the level of total allowable on-road emissions established by a control strategy implementation plan or maintenance plan. In this case, the MVEB establishes the maximum level of on-road emissions that can be produced in 2007, when considered with emissions from all other sources, which demonstrate attainment of the NAAQS. It is important because the MVEB is used to determine the conformity of transportation plans and programs to the SIP, as described by section 176(c)(2)(A) of the Act.

2. What Are the Motor Vehicle Emissions Budgets Being Proposed for Approval?

The MVEBs established by this plan and that the EPA is proposing to approve are contained in Table 2. The development of the MVEBs are discussed in section 3.5 of the SIP and reviewed in the TSD. We are proposing approval because we find the MVEB to be consistent with the attainment plan.

TABLE 2.—2007 ATTAINMENT YEAR MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day]

Pollutant	2007
VOC	89.99
NO_X	186.13

III. General Information

A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by File ID number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official file. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 27, 2005.

Richard Greene,

Regional Administrator, Region 6.

[FR Doc. 05–19994 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0033; FRL–7981–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the Houston/Galveston/Brazoria Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Texas State Implementation Plan concerning the Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the Houston/Galveston/Brazoria ozone nonattainment area. These revisions were adopted by the Texas Commission on Environmental Quality on December 01, 2004, as new sections 101.390–101.394, 101.396, 101.399–101.401, and 101.403, and submitted to EPA as a SIP revision on December 17, 2004. In related rulemakings today, EPA is also proposing approval of additional revisions to the Texas State Implementation Plan.

DATES: Comments must be received on or before November 4, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06–OAR–2005–TX–0033, 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://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm.* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. David Neleigh at *neleigh.david@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), at fax number 214–665–6762.
- Mail: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R06–OAR–2005–TX–0033. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through RME, regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME website and the Federal regulations.gov 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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. Guidance on preparing comments is given in the **SUPPLEMENTARY INFORMATION** section of this document under the General Information heading.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which 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 RME or in the official file, which is available at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permitting Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2115; fax number

214–665–6762; e-mail address *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION:
Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Outline

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I. Highly-Reactive Volatile Organic Compound Emissions Cap and Trade Program

A. What action is EPA proposing?

EPA is proposing approval of the Highly Reactive Volatile Organic Compound Emissions Cap and Trade (HECT) Economic Incentive Program (EIP), published at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H, Division 6, Sections 101.390–101.394, 101.396, 101.399–101.401, and 101.403. These revisions were submitted to EPA on December 17, 2004. Once approved, the HECT EIP will be an element of the Texas State Implementation Plan (SIP) for the Houston/Galveston/Brazoria (HGB) ozone nonattainment area.

B. HECT Program Summary

1. Why did Texas develop the HECT?

The HECT program was adopted as a State regulation on December 01, 2004. The Texas Commission on Environmental Quality (TCEQ) developed the program as part of its mid-course review of the 1-hour ozone attainment plan for the HGB ozone nonattainment area. The mid-course review showed that ozone reductions comparable to those achieved by the 90 percent reduction in industrial nitrogen oxide (NO_X) emissions required in the November 2001 (66 FR 57160) approved SIP could be achieved through a combination of 80 percent reduction in industrial NO_X emissions and additional targeted control of certain highly-reactive volatile organic compounds (HRVOCs). TCEQ has chosen to revise its attainment strategy accordingly, decreasing the emphasis on NO_X control and requiring additional reductions of HRVOCs. The HECT program is part of TCEQ's plan for achieving those additional HRVOC reductions.

2. How do HRVOCs lead to ozone problems in the HGB area?

Ground-level ozone forms when volatile organic compounds (VOCs) react with NO_X compounds in the presence of sunlight. Some VOCs react more quickly in the photochemical reaction than other VOCs; which can result in rapid spikes of ozone formation. TCEQ has identified a number of VOCs in the HGB nonattainment area that behave in this manner: ethylene; propylene; all isomers of butene, alpha-butylene, and beta-butylene; and 1,3-butadiene. These VOCs are now classified by TCEQ as HRVOCs in 30 TAC Chapter 115.

3. How is this document related to the HGB ozone attainment demonstration?

The HECT program is part of the revised Texas plan to reduce ozone levels through the reduction of HRVOCs. The purpose of this document is to explain our proposed action on the HECT and why we believe the HECT is consistent with the Clean Air Act and with our policies on trading programs. In this document, we are not reviewing the impact on the HGB ozone attainment demonstration of the State's request to change from 90 percent to 80 percent NO_X control. We are evaluating that change in strategy and its relationship to section 110(l) of the Clean Air Act in our review of the revisions to the overall attainment demonstration (RME Docket R06–OAR–2005–TX–0018). When we take final action on the attainment demonstration, we will also take final action on the HECT, in a separate rule.

4. How does the HECT work?

The HECT program is similar to the multi-source emissions cap-and-trade program described in EPA's EIP Guidance ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001). A multi-source emissions cap-and-trade program is designed to limit the total emissions from a certain category or group of sources to a level needed for an area to attain or maintain a national ambient air quality standard (NAAQS) and to allow sources flexibility in complying with their emission limits. In the HECT, TCEQ has established an annual HRVOC cap at the level relied on for attainment of the NAAQS for 1-hour ozone in 2007 in the revised attainment demonstration. As noted above, we are evaluating the merits of that demonstration in a separate rule (RME Docket R06–OAR–2005–TX–0018).

Under the HECT, in Harris County TCEQ has defined an HRVOC as one or more of the following VOCs: 1,3-butadiene; all isomers of butene, alpha-butylene, and beta-butylene; ethylene; and propylene. In Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties, an HRVOC is defined as ethylene and propylene. These compounds were identified based on their reactivity and prevalence in the HGB emissions inventory.

The HECT applies to each site in the HGB area that is subject to requirements in 30 TAC Chapter 115, Subchapter H, Division 1 for Vent Gas Control or Division 2 for Cooling Tower Heat Exchange Systems. EPA proposed approval of these HRVOC controls at 70 FR 17640, April 07, 2005. The HECT rule, at 30 TAC section 101.391, incorporates the definition of ''site'' at 30 TAC section 122.10: ''the total of all stationary sources located on one or more contiguous or adjacent properties, which are under common control or the same person (or persons under common control).'' Any HRVOC-emitting vent gas streams, flares, and cooling tower heat-exchange systems at these sites will be subject to the HECT and considered covered facilities. A site can have one covered facility or any combination of covered facilities. Each site that meets these requirements, or elected to opt in by April 30, 2005, will always be subject to the HECT.

Sites in the HGB area that have the potential to emit ten tons per year or less of HRVOCs from all covered facilities at the site are exempt from the HECT. These exempt sites had the opportunity to opt in to the HECT by notifying the TCEQ Executive Director in writing by April 30, 2005. Two sites in the HGB area submitted the opt-in notification to the TCEQ. No additional exempt sites will be eligible to opt in.

Additionally, all sites in Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller Counties (the ''seven surrounding counties'') are exempt from all HECT requirements other than the Level of Activity Certification requirements of 30 TAC section 101.401. When TCEQ proposed the HECT program, industry commented that the representations for HRVOC emissions in their air permits were significantly lower than the HRVOC cap that would be imposed on the seven county area. Sites in these seven surrounding counties agreed to take enforceable permit limits on propylene and/or ethylene instead of participating in the cap and trade program. In responding to comments on the proposal, TCEQ stated that it would only consider retaining the exemption if each site with a potential to emit more than 10 tpy of HRVOC established enforceable limits. The documentation establishing such enforceable limits was due to TCEQ by April 30, 2005. TCEQ will review these Level of Activity Certifications for sites in these counties to ensure that the enforceable limits achieve reductions comparable to those that would occur under the cap. Section 101.392 allows TCEQ to end this exemption by issuing public notice of its revocation.

The cap consists of allowances allocated by the TCEQ Executive Director to each facility in the HECT by January 1 of each year, beginning with January 1, 2007. Allocations are determined based on a site's contribution to overall level of activity and the area cap for HRVOCs. An allowance is the authorization to emit one ton of HRVOC emissions during a control period; the control period is the calendar year. The initial HECT control period begins January 1, 2007. A facility can choose to operate at, above, or below its allowance budget. A source operating below its allowance budget can bank or trade its allowances for use only in the next control period. A source operating above its allowance budget must purchase excess allowances from another source to demonstrate compliance with the cap. Beginning March 1, 2008, and no later than March 1 following the end of every control period, each facility must hold a quantity of allowances in its compliance account that is equal to or greater than the total emissions of HRVOCs emitted during the control period just ending. If a facility's actual emissions of HRVOCs during a control period exceed the amount of allowances held in the compliance account on March 1, allowances for the next control period will be reduced by an amount equal to the emissions exceeding the allowances in the compliance account, plus an additional 10 percent. This deduction does not preclude any additional enforcement action by the TCEQ. Additionally, if the site's compliance account does not contain sufficient allowances to cover this deduction, the TCEQ Executive Director may issue a notice of deficiency to the owner or operator. The owner or operator will then have 30 days from the notice of deficiency to purchase or transfer sufficient allowances to cover its compliance obligation. The HECT includes a provision to allow a facility to use emission reduction credits (ERCs) of less-reactive VOCs generated under the Texas Emission Credit Banking and Trading program (the ''ERC rule'') in lieu of HECT allowances if the ERCs are generated in the HGB area and the generating facility meets additional monitoring and reporting requirements. The HECT also includes a provision that exempts HRVOC emissions that are above the short-term HRVOC limit established in 30 TAC Chapter 115 from being counted towards a site's annual cap.

C. EPA's Analysis

1. How did EPA review and evaluate the HECT EIP?

Generally, SIP rules must be enforceable and must not interfere with attainment, reasonable further progress or any applicable requirement of the Clean Air Act. See Clean Air Act sections 110(a), 110(l), and 193.

A guidance document that we used to define evaluation criteria is ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001) (EIP Guidance). This guidance applies to discretionary EIPs adopted by a State as part of a SIP to attain national ambient air quality standards (NAAQS) for criteria pollutants, but the EIP Guidance is not EPA's final action on discretionary EIPs. Final action as to any such EIP occurs when EPA acts on it after its submission as a SIP revision. Because the EIP Guidance is non-binding and does not represent final agency action, EPA is using the Guidance as an initial screen to determine whether potential approvability issues arise. A more detailed review of the HECT program as compared to the EIP Guidance is in the Technical Support Document (TSD) for the TCEQ Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program for the HGB Nonattainment Area. The TSD is available at the location given in the **ADDRESSES** section of this document.

2. What criteria did EPA use to analyze the HECT EIP?

As described in detail in the EIP Guidance, EPA has identified three fundamental principles that apply to all EIPs: (1) Integrity (meaning that credits are based on emission reductions that are surplus, enforceable, quantifiable, and permanent), (2) equity, and (3) environmental benefit. The fundamental principles can apply to an EIP in its entirety (the programmatic level) or to individual sources (the source-specific level). EPA evaluated the HECT EIP against these three fundamental principles, specific concerns applicable to multi-source cap-and-trade programs, and applicable Clean Air Act requirements. Our complete analysis of the HECT EIP is contained in the TSD for this action.

3. What is EPA's analysis of the fundamental principle of integrity?

The integrity principle consists of the qualities of surplus, enforceable, quantifiable, and permanent.

Integrity Element One—Surplus. The first element of integrity is to determine whether the emissions reductions targeted by the EIP are surplus. Emission reductions are surplus if they are not otherwise relied on by the State in any other air quality-related programs including: the SIP, SIP-related requirements such as transportation conformity, other adopted TCEQ measures not in the SIP, and Federal rules that focus on reducing precursors of criteria pollutants such as new source performance standards. Additionally, if the multi-source emission cap-and-trade program is claiming reductions, the State must demonstrate that the cap on all emissions is below the threshold that would have been set for the affected sources before the program was implemented. The surplus element does not apply to the individual sources participating in a multi-source emission cap-and-trade program because sources have the option of making reductions or purchasing unused allowances from other facilities in the cap-and-trade program.

At the programmatic level, EPA has determined that the HECT program satisfies the integrity element of surplus. TCEQ established the cap on HRVOC emissions based on historical activity levels, air quality data, and modeling completed during the mid-course SIP review. To address uncertainty in the HRVOC inventory, TCEQ included a five percent buffer in the cap. The development of the cap level and the 5

percent buffer ensures that the cap will result in overall HRVOC emission reductions in the HGB area. Section 101.393 of the HECT specifically requires that reductions be surplus in a programmatic sense, by stating that allowances under the HECT may only be used for the purposes described in the rule.

The VOC ERCs eligible for conversion into HECT allowances must also meet the surplus criteria of the ERC rule at 30 TAC Chapter 101, Subchapter H, Division 1. EPA is not evaluating the ERC rule in this document. For further discussion of how the Division 1 ERCs are surplus, please refer to our separate action on the ERC Rule at RME Docket R06–OAR–2005–TX–0006.

For the above reasons, and as further explained in the TSD, EPA has concluded that the HECT is consistent with Clean Air Act requirements and EPA Guidance expectations for the integrity element of surplus.

Integrity Element Two—Enforceable. The generation and use of emission reductions and other required actions in the EIP are enforceable on a programmatic basis if they are independently verifiable and if the EIP defines program violations and identifies those liable for violations. For enforceability, both the State and EPA should have the ability to apply penalties and secure appropriate corrective actions where applicable. Citizens should also have access to all the emissions-related information obtained from the source so that citizens can file suits against sources for violations. Required actions must be practicably enforceable. At the source-specific level, the source must be liable for violations; the liable party must be identifiable; and the State, the public, and EPA must be able to independently verify a source's compliance. Additionally, EIPs that involve trading must incorporate provisions for assessing liability, provisions to assess penalties against participating sources, and provisions for sources with Title V permits. In multi-source emission cap-and-trade EIPs, each source owner or operator must be responsible for owning enough allowances to cover its emissions for the given time period and for providing clear title to the allowances it transfers.

EPA has determined that the HECT program is enforceable. The monitoring and testing protocols established in 30 TAC Chapter 115 are adequate for independent verifications of emission reductions and for demonstrating practicable enforceability. Additionally, the VOC ERCs that are eligible for conversion into HECT allowances must be quantified using the monitoring and testing methods under sections 115.725 or 115.764 and must meet the recordkeeping and reporting requirements under sections 115.726 and 115.766. An owner or operator can violate the HECT by either not having enough allowances to cover its actual emission level for a control period or by failing to submit an Annual Compliance Report on time, as defined at sections 101.394(e) and 101.400(b). The liable party is either the owner or operator of a subject facility. Information to be made available to the public is addressed at sections 101.399(b)(3), 101.399(c)(3), 101.399(d)(3), 101.403(a)(3), and 101.403(b). The allowance banking and trading provisions in section 101.399 also provide clear title to the allowances transferred.

Penalties, corrective action, and citizen filing of lawsuits are not addressed in the HECT rules but are in separate State laws and regulations. In particular, Texas Water Code section 7.051 provides for the assessment of administrative penalties by TCEQ, and section 7.032 provides for injunctive relief by TCEQ. The TCEQ enforcement rule at 30 TAC section 70.5 incorporates remedies found in the state statutes (Texas Water Code and the Texas Health and Safety Code), and permits referrals to EPA for civil, judicial or administrative action. It is our conclusion the TCEQ has adequate legal authority to enforce the HECT program. Once we approve the HECT rule into the SIP, EPA will be able to enforce it under section 113 of the Clean Air Act. Recordkeeping requirements specific to the HECT program are set forth at section 101.400.

For the above reasons, and as further explained in the TSD, EPA has concluded that the HECT is consistent with Clean Air Act requirements and EPA Guidance expectations for the integrity element of enforceability.

Integrity Element Three—Quantifiable. On a programmatic basis, emissions and emission reductions attributable to an EIP are quantifiable if the source can reliably and replicably measure or determine them. The generation or use of emission reductions by a source or group of sources is quantifiable on a source-specific basis if the sources can reliably calculate the amount of emissions and/or emission reductions occurring during the implementation of the program, and replicate the calculations. Additionally, individual sources participating in a multi-source emission cap-and-trade program must also quantify total emissions per unit of time. All EIPs should incorporate provisions for predicting results, addressing uncertainty, approving quantification protocols, and emission quantification methods.

EPA has determined that the HECT program addresses the necessary provisions for quantifiability. Emissions and/or emission reductions under the HECT follow the monitoring and testing protocols in Chapter 115, thus satisfying the need to be reliably and replicably measured. Sections 115.725 and 115.764 require sites to install and operate continuous monitoring systems. Sources subject to the HECT will quantify total emissions per unit time by submitting the required Annual Compliance Report detailing actual HRVOC emissions during the control period.

Integrity Element Four—Permanent. To satisfy the permanence element of the integrity principle, a compliance flexibility EIP must ensure that no emission increases (compared to emissions if there was no EIP) occur over the time defined in the SIP. For a programmatic reduction EIP, the emissions reductions are permanent if the State is able to ensure that the reductions occur over the duration of the EIP, and for as long as the reductions are relied on in the SIP.

EPA has determined that the HECT program meets the definition of a compliance flexibility EIP because it provides sites with flexibility in meeting existing SIP requirements and lowers the cost of implementing a SIP. The HECT also meets the definition of a programmatic reduction EIP because the cap is established at a level that will achieve emission reductions beyond what are currently in the SIP. The HECT rules and other elements of the HGB attainment demonstration are designed to ensure that programmatic reductions occur over the duration of the HECT program, and for as long as they are relied on in the SIP. The TCEQ Executive Director will allocate allowances (the authorization to emit one ton of HRVOC) each year on January 1, starting January 1, 2007. The integrity element of permanence does not apply to individual sources participating in the HECT because sources have the option to make reductions or purchase unused allowances from other sources program. We conclude that the HECT EIP satisfies the integrity element of permanence.

4. What is EPA's analysis of the fundamental principle of equity?

Equity Element One—General Equity. General equity means that an EIP ensures that all segments of the population are protected from public

health problems and no segment of the population receives a disproportionate share of a program's disbenefits.

The HECT EIP is designed to benefit all communities in the HGB area. The cap in Harris County permanently caps emissions of four HRVOCs—ethylene, propylene, 1,3-butadiene, and all isomers of butenes. Not only will the HECT reduce the amount of ozone precursors emitted in Harris County, it permanently caps emissions of a hazardous air pollutant. The enforceable limits in the seven surrounding counties for ethylene and propylene, which are the result of permit limits agreed to between TCEQ and the affected sites, will also reduce emissions of ozone precursors. Additionally, section 101.394(e) requires an owner or operator of a facility that emits more HRVOCs than its allowance holding to surrender an amount of allowances equal to the exceedance plus an additional 10 percent as an environmental benefit. We conclude that the HECT meets the requirements for general equity.

Equity Element Two—Environmental Justice. The environmental justice element applies if the EIP covers VOCs and could disproportionately impact communities populated by racial minorities, people with low incomes, and/or Tribes. EIPs that include hazardous air pollutants (HAPs) must also satisfy the expectations of Appendix 16.2 of the EIP Guidance, which addresses prevention and/or mitigation of impacts from potential or actual trades involving HAPs, ensuring that sufficient information is made available for meaningful review and participation, public participation, and periodic program evaluations.

The HECT is designed to permanently cap emissions of four HRVOCs, including one HAP (1,3-butadiene). EPA has evaluated the HECT with respect to the HAP Framework and EIP Guidance and determined that the environmental justice element of equity has been met.

Compliance with the HAP Framework element for the prevention and/or mitigation of localized impacts from potential or actual trades involving HAPs is demonstrated through the HECT audit program established in section 101.403. Under this section, the TCEQ Executive Director may limit or discontinue trading of allowances as a remedy for problems resulting from trading in a localized area of concern. Additionally, the TCEQ Executive Director must approve all trades of HECT allowances.

Compliance with the HAP Framework element for sufficient information is demonstrated further by section 101.399, which provides that all information regarding price and quantity of allowances trades must be available to the public. Additionally, the required annual compliance reports and periodic program audits must be available to the public.

The HECT program satisfies the HAP Framework element for public participation in the development, implementation, and evaluation of the program. In the development of the HECT rules, TCEQ held public hearings in Austin, Beaumont, and Houston. TCEQ also has an extensive stakeholder list of approximately 150 contacts who receive copies of all TCEQ rulemaking actions for comment and participation in development. During the implementation of the HECT EIP, the public has the opportunity to view the Annual Compliance Reports submitted by each source and the end of year reports prepared by the TCEQ in accordance with section 101.403(b). Public participation is incorporated into the evaluation of the HECT EIP at section 101.403(a)(3), which provides for public participation in the audit of the HECT rule.

The final element of the HAP Framework, program evaluations, is satisfied at section 101.403, which establishes the HECT audit program. The rule requires a program audit every three years, with emphasis on the impact on attainment and compliance by the participants. The audit results must be available for public inspection.

As an added measure that demonstrates general equity and environmental justice, TCEQ has developed the Toxicological Risk Assessment (TARA) Effects Evaluation Procedure. Under this process, which is authorized under section 382.0518(b)(2) of the Texas Health and Safety Code, TCEQ may not grant a permit to a facility and a facility may not begin operating unless it is demonstrated that emissions will not have an adverse impact on public health and welfare. This demonstration is accomplished by (1) establishing off-property ground-level-air concentrations of constituents resulting from the proposed emissions, and (2) evaluating these concentrations for the potential to cause adverse health or welfare effects. The TARA Effects Evaluation is used to evaluate the use of HECT allowances in an air permit. The TCEQ guidance document ''How to Determine the Scope of Modeling and Effects Review for Air Permits'' (RG–324, Oct. 2001) has a detailed discussion of the TARA Effects Evaluation procedures.

5. What is EPA's analysis of the fundamental principle of environmental benefit?

All EIPs must be environmentally beneficial. The HECT demonstrates an environmental benefit by setting a cap on HRVOCs that will help the HGB area in achieving attainment of the NAAQS as expeditiously as practicable. Additionally, the HECT places a cap on emissions of a HAP (1,3-butadiene), thereby lowering the emissions of this toxic chemical in the HGB area. Sources that emit more HRVOCs than they have allowances will also be required to surrender the amount equal to the exceedance plus 10 percent as an environmental benefit.

6. Does the HECT EIP violate the integrity of other programs?

In addition to determining the programmatic and source-specific integrity elements for an EIP, it is important to determine whether the EIP generates emission reductions in a manner consistent with other EIPs functioning in the same area. One feature of the HECT combines two of the State of Texas' Emissions Banking and Trading Programs, in that it allows a participating facility to convert reductions of less-reactive VOCs, generated and banked according to the 30 TAC Chapter 101, Subchapter H, Division 1 Emission Credit Banking and Trading rule, into a yearly HECT allocation. The site's owner or operator quantifies the VOC emission reduction credits (ERCs) by performing the expanded monitoring and testing methods under 30 TAC sections 115.725 or 115.764 and using the recordkeeping and reporting outlined in 30 TAC sections 115.726 and 115.766. ERCs eligible for this conversion must be generated from a reduction at a site in the HGB area; from a reduction strategy implemented after December 31, 2004; and from a reduction in VOC species other than those defined as HRVOCs under 30 TAC Chapter 115.10. Additionally, the VOC ERCs must be real, quantifiable, surplus, enforceable, and permanent as specified in the ERC rule at section 101.302 at the time the ERC is converted. Section 101.399 of the HECT specifies that VOC reductions from the installation of best available control technology do not qualify for conversion into HRVOC allocations. This restriction on ERC generation is in addition to the surplus requirements of section 101.302. To satisfy the criteria of the ERC program, the reductions must be surplus to required local, State, and Federal programs such as the application of maximum achievable

control technology, new source performance standards, or lowest achievable emission rate.

The conversion of less-reactive VOC ERCs into HRVOC allowances is limited to five percent of the site's initial HRVOC allocation, and is based on VOC to HRVOC conversion ratios specified by the Maximum Incremental Reactivity (MIR) scale. The MIR scale is based on research by Dr. William Carter and others at University of California at Riverside, who sought a method of quantifying the reactivity differences among VOCs (Carter, 1995; Carter *et al.*, 1995). The MIR is a measure of the number of grams of ozone that can be formed from one gram of the subject VOC, under ideal conditions. To determine the relative importance of different VOCs from a reactivity perspective, reactivity-weighted concentrations of specific compounds or groups of compounds were calculated. Reactivity-weighted concentrations take into consideration the substances' capability to form ozone as well as their measured ambient concentrations.

As further discussed in the TSD for this rule and in the attainment demonstration TSD, the program feature allowing generation of HRVOC allowances using reductions in less-reactive VOCs does not prevent approval of the program, because the expected impact on the attainment demonstration is expected to be minimal. Texas is making an allowance for a small increase in HRVOCs (up to 5 percent) to be offset with larger reductions in less-reactive VOCs. Modeling sensitivity analyses were performed by the University of Texas and documented in a report, titled ''Survey of Technological and Other Measures to Control HRVOC Event Emissions.'' In this report, trades of less-reactive VOCs much larger than would be allowed with the 5 percent cap were considered. In the sensitivity runs, the impacts ranged from a 2.1 ppb increase to a 3 ppb decrease in the peak ozone, depending on the episode day and the assumptions made about the less-reactive chemical that was reduced. The researchers looked at the impact of adding between 15 and 33 tpd of HRVOC to the model while removing the requisite amount of less-reactive VOCs. Under the rule, capping trades at a 5 percent increase in highly-reactive VOCs, an increase of less than 2 tpd of HRVOCs would be all that could be allowed. Therefore, the impact of the actual program is expected to be minimal.

In addition, for sources that participate in the program, this feature will have the advantage of implementing additional source monitoring on less-reactive VOCs. EPA proposed approval of the monitoring and testing methods in 30 TAC sections 115.725 and 115.764 and the recordkeeping and reporting requirements in 30 TAC sections 115.726 and 115.766 on April 07, 2005 (70 FR 17640). Based on the above modeling that indicates that this limited conversion of less-reactive VOCs will have a minimal impact on ozone levels, EPA concludes that even with this feature, the HECT program provides compliance flexibility and a significant strengthening of the SIP by contributing to reduced ozone levels in the HGB area.

Our proposed approval does not represent a general endorsement of the use of the MIR scale for use in SIPs that contain EIPs. In this instance, with the aforementioned technical support, we believe this is an acceptable approach, which is consistent with EPA's recently issued ''Interim Guidance on the Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (August 25, 2005). EPA will continue to investigate how best to incorporate reactivity concepts and consider changes to existing policy.

7. What is EPA's analysis of the interaction between the annual HRVOC cap and the short-term HRVOC limit?

Texas has included features in the adopted HRVOC rules defining the interaction between the annual cap and short-term limit (established at 30 TAC Chapter 115, Subchapter H) that are unique to the HECT. Typically, all emissions during the year would be counted toward compliance with an annual cap. In establishing a cap-and-trade system for the petrochemical industry in the HGB area, TCEQ felt it necessary to consider the possibility of major upsets. TCEQ believed that non-routine emissions from process upsets, while likely to occur, are not predictable and therefore could make management of emissions under an annual cap difficult. Therefore, TCEQ established in its rule that emissions above the 1200 lb/hr short-term limit are not counted toward compliance with the annual cap but rather are expected to be controlled by the short-term limit. TCEQ was particularly concerned about the potential situation where a single large release could force a smaller source to shut down for the remainder of the year because its allowances had been exhausted.

Although EPA agrees that a forced shutdown of smaller sources is possible, it believes that many upsets can be avoided by a source through the development and implementation of operation and maintenance plans that address start-up, shutdown and malfunction of process equipment and application of good air pollution control practices such as required by 40 CFR 60.18(d). EPA notes that application of these procedures would significantly reduce the emissions associated with such start-up, shutdown, and malfunction events and could avoid the need for a forced shutdown. In addition, planning and management of emissions by the source, including participation in the allowance market, should also avoid a forced shutdown while ensuring compliance with the annual cap.

Emissions above the short-term limit would still be subject to enforcement as a violation of the short-term limit, but only 1200 lbs would be reported for compliance with the annual cap during those hours where emissions exceed 1200 lbs. It is our expectation that the root cause of the conditions giving rise to the emissions above the short-term cap will be identified and corrected. Moreover, the source is still required to use good air pollution control practices consistent with the applicable NSPS (40 CFR 60.11(d)) and MACT standards or other applicable Federal or State programs.

The structure of the Texas HECT program, which does not require emissions above the short-term limit to be counted against the annual cap, is a significant departure from past practices for cap-and-trade programs such as the Title IV Acid Rain program and the Houston NO_X cap-and-trade program. EPA's EIP Guidance regarding multi-source emissions cap-and-trade programs indicates that all sources in the program must account for all of their emissions. See section 7.4 of the EIP Guidance. We believe, in this instance, that the approach of not counting emissions above the short-term limit toward the annual cap has both advantages and disadvantages as discussed below. We are inviting comment on the appropriateness of approving a program with this structure, as we remain concerned about excess emissions resulting from poor operation or poor maintenance.

We believe that the structure of the HECT rule has the advantage of establishing a clear procedure for how emissions during non-routine events will be handled. For every hour during a large emissions event, the source will include 1200 lbs toward meeting its annual cap. This will avoid disputes about the validity of data during large emission events, when monitoring may be less reliable. The rule clearly defines the procedures to be followed during an emission event. Sources will have no

choice but to ensure that at the end of the compliance period they have sufficient allowances to cover all of the emissions up to the 1200 lb limit, or else face deductions from their compliance account and other potential penalties. In addition, emissions above that level would be subject to enforcement under the short-term limit.

On the other hand, the structure of the rule has the disadvantage that some of the incentive to prevent large releases is lost by excluding emissions above the short-term limit from the annual cap. In addition, some of the incentive for reducing the size of large events, when they occur, may also be lost. With the annual cap-and-trade program's exclusion of emissions above the hourly (short-term) limit, it is probable that fewer violations of the annual cap will occur than if the exclusion had not been provided. For sources that would have violated the annual cap if emissions above the short-term limit were considered, it may be harder to promote systemic changes at those sources to reduce overall emissions.

Having looked at the advantages and disadvantages, we are proposing approval of the HECT program. We are proposing approval because, even though it provides an exclusion for non-routine emissions above the short-term limit from the annual cap, it provides new enforceable limits that are an improvement on the status quo. We believe the annual cap in conjunction with the short-term limit will achieve the goals of the attainment demonstration as indicated by the modeling analysis. The annual cap should result in the necessary reductions in routine emissions and the short-term limit should result in a reduction in the amount and frequency of non-routine emission events. We note that the program rules require TCEQ to audit the HECT program every three years, and facilities have to provide compliance reports annually, so it will be readily apparent if the goals of the HECT program are being achieved.

We believe the program will achieve the necessary reductions in routine emissions because the size of the short-term limit is such that only truly non-routine emissions will not be counted toward the annual cap. Based on evaluation of the emission rates that were modeled in the January 2003 SIP, the 1200 lb/hour limit is expected to be about ten times larger than the average hourly emission rate at the largest sources of HRVOCs. This order of magnitude difference between the short-term limit and the average annual hourly emissions ensures that sources will not routinely operate near or above the short-term limit, thus achieving the goal of reducing routine emissions.

Also, while the structure of the HRVOC rules anticipates that emission events will not be completely eliminated, EPA believes that it provides sufficient disincentives that sources will sufficiently reduce the frequency and magnitude of large emissions events such that emission events would not be expected to frequently impact peak ozone levels. The University of Texas report ''Variable Industrial VOC Emissions and Their Impact on Ozone Formation in the Houston Galveston Area,'' April 16, 2004, estimated from historic information that it is probable that at least one event will occur annually at a time and location to impact peak ozone. This indicates that while emission events are frequent in the Houston area, emission releases at the place and time that impact peak ozone do not occur nearly as frequently. It is necessary to reduce the frequency of emission events so that emission events do not interfere with attainment of the 1-hour NAAQS, which only allows an average of one exceedence per year. Based on the study, we believe the hourly emission limit will achieve this goal. After the institution of the short-term limit, EPA expects that emissions events impacting peak ozone levels will be reduced in frequency to fewer than one per year. While other events may occur that impact ozone levels at other locations than where the peak ozone level occurs, these events, because they are occurring in areas with lower ozone levels, would not be expected to impact attainment of the 1-hour NAAQS.

Again, EPA recognizes that the approach of providing this partial exclusion for emissions above the short-term limit is a departure from past practice and our EIP Guidance. We currently believe this approach is only warranted in consideration of the HGB area's unique situation that combines an extensive petrochemical complex and the availability of the extensive data and analysis. Consideration of this novel approach is warranted to balance the need to reduce both routine and upset emissions of HRVOC, but also recognizes that large upset emissions may never be completely eliminated in the petrochemical industry. Because of the uniqueness of this approach, however, we invite comment on of our proposed approval of this facet of the Texas plan.

8. What is EPA's analysis of the HECT program with respect to section 110(l) of the Clean Air Act?

Section 110(l) of the Clean Air Act states:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

As a general matter, the satisfaction of the environmental benefit principle and the other integrity principles applicable to trading programs will tend to demonstrate that a trading program will be consistent with section 110(l). In the case of the HECT program, we are proposing approval of a new set of measures instituting new controls on a class of VOCs that are more stringent than previous controls on VOCs. The HECT rules being proposed for approval provide no relief from any previously approved VOC rule or any other applicable requirement. Therefore, the proposed approval of the HECT rules is consistent with section 110(l).

Here, however, as previously noted, the revisions to the HECT are a part of a revised ozone attainment strategy for the HGB area. In addition, we are reviewing the limited use of ERCs in the HECT. The revised strategy's reduced level of industrial NO_X control and the effect of the use of ERCs in the HECT are being evaluated separately in the HGB attainment demonstration for the 1-hour ozone standard. The section 110(l) analysis for our action on the HECT therefore relies on the analysis conducted for the HGB attainment demonstration. Based on our analysis of the attainment demonstration, we conclude that the HECT, in conjunction with all other controls in the attainment demonstration, satisfies section 110(l).

D. Conclusion

EPA reviewed the HECT SIP submittal with respect to the expectations of the EIP Guidance document and the requirements of the Clean Air Act. EPA has concluded after review and analysis that the HECT EIP is approvable. EPA is proposing to approve the new sections 101.390–101.394, 101.396, 101.399, 101.401, and 101.403 submitted by TCEQ on December 17, 2004, for rule log number 2004–0058–101–AI. These rules provide new requirements that will reduce emissions of HRVOCs in the HGB ozone nonattainment area.

We will not take final action on these rules until we finally approve the

attainment demonstration. Additionally, the HECT program cannot be finally approved until the EPA finalizes approval of the 30 TAC Chapter 115 HRVOC rules that provide the enforceable monitoring and recordkeeping requirements sufficient to demonstrate practicable enforceability and quantifiability. Provisions allowing ERC use in the HECT program will also not be fully approved until the rules for ERC generation and use have been approved. The attainment demonstration and the Chapter 115 and ERC rules are being considered in separate **Federal Register** notices.

II. General Information

A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by File ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official file. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

III. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, ''Regulatory Planning and Review.'' (58 FR 51735 (October 4, 1993)). This proposed 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 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, 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, or tribal governments in the aggregate, or on the private sector, in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments in accordance with section 203 of UMRA.

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, ''Consultation and Coordination with Indian Tribal Governments'' (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, ''Federalism'' (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)). EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it approves a state program.

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272 note) requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. In reviewing a SIP submission, EPA has no authority under the Clean Air Act, in the absence of a prior existing requirement for the State to use VCS, to disapprove a SIP submission for failure to use VCS. Thus, it would be inconsistent with applicable law for EPA to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act and further consideration of VCS is not required. Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons.'' (44 U.S.C. 3502(3)(A)). This proposed rule does not impose an information collection burden under the provisions of the PRA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 27, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–19996 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0006; FRL–7980–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) concerning the Emission Credit Banking and Trading program. Additionally, EPA is proposing approval of a section of the Texas rules on Control of Air Pollution from Volatile Organic Compounds that cross-references the Emission Credit Banking and Trading program. We are also proposing approval of a subsection of Chapter 116 of the Texas Administrative Code (TAC), Control of Air Pollution by Permits for New Construction or Modification, which provides a definition referred to in the Emission Credit Banking and Trading Program.

DATES: Comments must be received on or before November 4, 2005.

ADDRESSES: Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2005–TX–0006, 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://docket.epa.gov/rmepub/*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm* Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. David Neleigh at *neleigh.david@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), at fax number 214–665–6762.
- Mail: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R06–OAR–2005–TX–0006. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through RME, regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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. Guidance on preparing comments is given in the **SUPPLEMENTARY INFORMATION** section of this document under the General Information heading.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information the disclosure of which 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 RME or in the official file, which is available at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permitting Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2115; fax number 214–665–6762; e-mail address *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Outline

I. Emission Credit Banking and Trading Program
A. What action is EPA proposing?
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other reductions from outside the area of use?
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I. Emission Credit Banking and Trading Program

A. What action is EPA proposing?

EPA is proposing approval of the Emission Credit Banking and Trading program, also referred to as the Emission Reduction Credit (ERC) program, enacted at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H, Division 1, sections 101.300–101.304, 101.306, 101.309, and 101.311. Also in this document, EPA is proposing approval of section 115.950 in 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, which cross-references the ERC program. EPA is also proposing approval of the definition of ''facility'' published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter A, section 116.10(4). These revisions were provided in SIP revisions dated July 22, 1998; December 20, 2000; July 15, 2002; January 31, 2003, and December 06, 2004.

B. Summary of the Emission Credit Banking and Trading program

1. How does the ERC program work?

In the ERC program, a source generates emission credits (ECs) from voluntary reductions that are surplus to any applicable local, state, and/or federal requirements. Emission credit is a generic term that encompasses reductions from stationary sources, emission reduction credits (ERCs), and reductions from mobile sources, mobile emission reduction credits (MERCs). Reduction strategies generating ECs are required to be permanent and will be made enforceable by a signed commitment from the generating facility. The source can then use these ECs later, or trade them to another source to use later. ECs can be used as an alternative means of compliance with the reduction requirements of 30 TAC Chapters 114, 115, and 117 (relating to Control of Air Pollution from Motor Vehicles; Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds), as offsets for Nonattainment New Source Review permits, or as annual allocations under the Mass Emission Cap and Trade Program (30 TAC Chapter 101, Subchapter H, Division 3, section 101.356). Once applied to a facility for use, an EC is valid for the life of that facility.

Eligible EC generator categories include facilities (including area sources); mobile sources; or any facility, including area sources, or mobile sources associated with actions by Federal agencies under 30 TAC 101.30 (relating to Conformity of General Federal Actions to SIPs). The ERC rule, at 30 TAC section 101.300(13), incorporates the definition of ''facility'' at 30 TAC section 116.10: ''a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source including appurtenances other than emission control equipment.'' ERCs and MERCs must be reviewed by the state to determine if they are creditable and certified by the TCEQ Executive Director before inclusion in the TCEQ ERC Registry. Additionally, ERCs and MERCs must be shown to be surplus at the time of use before being applied to a use strategy.

Under the ERC rules, reductions of criteria pollutants, excluding lead, or of precursors of criteria pollutants for which an area is designated nonattainment, may qualify as ECs. Reductions of one pollutant may not be used to meet the reduction requirements for another pollutant, unless urban airshed modeling demonstrates that one ozone precursor may be substituted for another subject to approval by the TCEQ Executive Director and the EPA. Or, as provided in the ERC rules, if the facility generating the emission reductions is located outside the United States, one pollutant may be substituted for another if the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area as determined by the TCEQ Executive Director. Additionally, the substitution must be from the reduction of an air contaminant for which the area has been designated as nonattainment or which leads to the formation of a criteria pollutant for which an area has been designated as nonattainment, and must be for any air contaminant for which the area has been designated as nonattainment or leads to the formation of a criteria pollutant for which the area has been designated as nonattainment. The user of the ECs generated outside the United States must demonstrate that the use of the reduction does not cause localized health impacts, as determined by the TCEQ Executive Director; submit all supporting information for calculations and modeling, and any additional information requested by the Executive Director; and must be located within 100 kilometers of the Texas—Mexico border. An EC must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the Executive Director and EPA. This approval requirement would, of course, apply to all transactions involving reductions made outside of the United States. Except for ECs generated outside of the United States, only emission reductions generated in nonattainment areas can be certified. Please see section I.C.7 for a discussion of issues associated with international trading.

In this action, when we refer to this program as ''the ERC rule'' or ''the ERC program'' we are speaking of the entire Emission Credit Banking and Trading program, which encompasses both ERCs and MERCs.

2. What is the history of the ERC program?

The ERC rules establish a type of Economic Incentive Program (EIP). This program provides flexibility for sources in complying with certain State and Federal requirements. The ERC program was first adopted by the State at 30 TAC section 101.29 on December 23, 1997, for use with volatile organic compound (VOC) and nitrogen oxides (NO_X) requirements in ozone nonattainment areas. Effective January 18, 2001, section 101.29 was repealed and Chapter 101, Subchapter H, Divisions 1, 3, and 4 were created for the ERC, Mass Emissions Cap and Trade (MECT) in the Houston/Galveston/Brazoria (HGB) ozone nonattainment area, and Discrete Emission Credit Banking and Trading (DERC) programs, respectively. The submittal effective April 14, 2002, amended the geographic scope of the ERC program to include provisions for reductions generated outside the United States at section101.302. The submittal effective January 17, 2003, completely reorganized the ERC and DERC program rules into more standardized formats parallel to each other, with a rule structure that followed a process of recognizing, quantifying, and certifying reductions as credits while explaining the guidelines for trading and using creditable reductions. This submittal amended sections 101.300, 101.301, 101.302, 101.303, 101.304, 101.306, 101.309, and 101.311. The most recent submittal of December 06, 2004, amended sections 101.300, 101.302, 101.303, 101.304, and 101.311; expanding the ERC program to cover reductions of criteria pollutants (excluding lead) or precursors of criteria pollutants for which an area is

designated nonattainment. The ERC program adoption and the subsequent revisions were submitted to EPA for approval into the SIP; however, this proposed approval is the first time we have acted on this program. In doing so we are acting on the original submission and all subsequent revisions through the December 06, 2004, submittal.

C. EPA's Analysis

1. How did EPA review and evaluate the ERC program?

Generally, SIP rules must be enforceable and must not relax existing requirements. See Clean Air Act sections 110(a), 110(l), and 193.

A guidance document that we used to define evaluation criteria is ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001) (EIP Guidance). This guidance applies to discretionary economic incentive programs (EIPs) adopted to attain national ambient air quality standards (NAAQS) for criteria pollutants, but the EIP Guidance is not EPA's final action on discretionary EIPs. Final action as to any such EIP occurs when EPA acts on it after its submission as a SIP revision. Because the EIP Guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether potential approvability issues arise. A more detailed review of the ERC Program as compared to the EIP Guidance is in the Technical Support Document (TSD) for the TCEQ Emission Credit Banking and Trading Program. The TSD is available as specified in the section of this document identified as **ADDRESSES.**

2. What criteria did EPA use to analyze the ERC program?

Fundamental principles that apply to all EIPs are integrity (meaning that credits are based on emission reductions that are surplus, enforceable, quantifiable, and permanent), equity, and environmental benefit. These fundamental principles can apply to an EIP in its entirety (the programmatic level) or to individual sources (the source-specific level). EPA evaluated the ERC EIP against these three fundamental principles and applicable Clean Air Act requirements. Our complete analysis of the ERC program is contained in the TSD for this action.

3. What is EPA's analysis of the fundamental principle of integrity?

The integrity principle consists of the qualities of surplus, enforceable, quantifiable, and permanent. Each element applies to the ERC EIP at the programmatic and source-specific level.

Integrity Element One—Surplus. The element of surplus as it applies to the ERC program provides that programmatic emission reductions are surplus as long as they are not otherwise relied on in any other air quality-related programs including: the SIP, SIP-related requirements such as transportation conformity, other adopted TCEQ measures not in the SIP, and federal rules that focus on reducing precursors of criteria pollutants such as new source performance standards. In addition to the programmatic concerns, if emission reductions are to be surplus at a source-specific level then the creation of the reductions cannot be required by a consent decree. Emission reductions measured by sources on a prospective basis are surplus if the projected baseline emissions from the source or group of sources are properly accounted for in the applicable inventory or by using an acceptable baseline.

The ERC program satisfies the surplus criteria at both the programmatic and source-specific levels. For reductions to be certified as either ERCs or MERCs, the reduction must be enforceable, permanent, quantifiable, real, and surplus at the time of generation and use according to section 101.302(c). Surplus is defined in the ERC program at section 101.300(30) to be an emission reduction that is not otherwise required of a facility or mobile source by any local, state, or federal law, regulation, or agreed order and has not been otherwise relied upon in the SIP. Additionally, mobile sources must have been included in the attainment demonstration baseline emissions inventory as specified in section 101.302(c)(2)(E). Section 101.303(b) specifies that the baseline for ERC generation may not exceed the quantity of emissions reported in the most recent year of emissions inventory used in the SIP. Also, for reductions being certified for use as new source review (NSR) offsets, the baseline emissions may not exceed the quantity of emissions reported in the emissions inventory used in the SIP in place at the time the reduction strategy was implemented.

Integrity Element Two—Enforceable. Emission reductions use, generation, and other required actions in the EIP are enforceable on a programmatic basis if they are independently verifiable, define program violations, and identify those liable for violations. For enforceability, both the state and EPA should have the ability to apply penalties and secure appropriate corrective actions where applicable. Citizens should also have access to all the emissions-related information obtained from the source so that citizens can file suits against sources for violations. Required actions must be practicably enforceable in accordance with other EPA guidance on practical enforceability. At the source-specific level, the source must be liable for violations, the liable party must be identifiable, and the state, the public, and EPA must be able to independently verify a source's compliance. In addition to addressing the enforcement concerns discussed above, trading EIPs must incorporate provisions for assessing liability, provisions to assess penalties against participating sources, and provisions for sources with Title V permits.

The ERC program submittal satisfies the enforceable element of the integrity principle. ERCs will be made enforceable:

- By amending or altering a New Source Review permit to reflect the emission reduction and set a new maximum allowable emission limit;
- By voiding an NSR permit, when a facility has been shut down;
- For any facility authorized by standard permit, standard exemption, or permit by rule, by certifying the emission reduction and the new maximum allowable emission limit on a PI–8 Form, Special Certification Form for Exemptions and Standard Permits, or other form deemed equivalent by the executive director;
- For any facility not required to have a permit authorization by permit, standard permit, standard exemption, or permit by rule, by certifying the emission reduction and the new maximum allowable emission limit on an OPC–RE1 Form, Certified Registration of Emissions Form for Potential to Emit, or other form considered equivalent by the TCEQ Executive Director, or by obtaining an agreed order setting a new maximum allowable emission limit.

The enforceability of MERCs is addressed at section 101.304(e)(4), where MERCs will be made enforceable by obtaining an agreed order that sets a new maximum allowable mobile source emission limit.

The monitoring and testing protocols established in 30 TAC Chapters 115 and 117 are adequate for independent verifications of emission reductions certified as ERCs or MERCs and for demonstrating practicable enforceability. Citizens' access to all emissions-related information is addressed in section 101.302(h), which provides that all information submitted with notices, reports, and trades regarding the nature, quantity, and sales

price of emissions associated with the use, generation, and transfer of an ERC or MERC is public information and may not be submitted as confidential. The rule also requires that all nonconfidential notices and information regarding the generation, availability, use, and transfer of ERCs and MERCs shall be immediately made available to the public.

Penalties, corrective action, and citizen lawsuits are not addressed in the ERC rules, but are in separate laws and regulations. In particular, Texas Water Code section 7.051 provides for the assessment of administrative penalties by the TCEQ, and section 7.032 provides for injunctive relief by the TCEQ. The TCEQ enforcement rule at 30 TAC section 70.5 incorporates remedies found in the state statutes (Texas Water Code and the Texas Health and Safety Code), and permits referrals to EPA for civil, judicial or administrative action. It is our conclusion that TCEQ has adequate legal authority to enforce its ERC program. Once we approve the ERC rule into the SIP, EPA will be able to enforce it under section 113 of the Clean Air Act. Recordkeeping requirements specific to the ERC rule are set forth at section 101.302(g).

For the above reasons, and as further explained in the TSD, EPA has concluded that the ERC program is consistent with Clean Air Act requirements and EIP Guidance expectations for the integrity element of enforceability.

Integrity Element Three—Quantifiable. On a programmatic basis, emissions and emission reductions attributable to an EIP are quantifiable if the source can reliably and replicably measure or determine them. The generation or use of emission reductions by a source or group of sources is quantifiable on a source-specific basis if the sources can reliably calculate the amount of emissions and emission reductions occurring during the implementation of the program, and replicate the calculations. All EIPs should incorporate provisions for predicting results, addressing uncertainty, approving quantification protocols, and emission quantification methods.

The ERC program meets the quantifiable criteria, because its rules require that reductions certified as ERCs or MERCs be quantifiable, which is defined as an emission reduction that can be measured or estimated with confidence using replicable methodology. As protocols for making these determinations, the ERC program refers to the emission quantification requirements of 30 TAC Chapter 115 and Chapter 117. These monitoring requirements are reliable and replicable and have previously been approved by EPA. Generators/users wanting to use other quantification protocols must follow the quantification requirements at section 101.302(d)(1)(C), which include a requirement for EPA adequacy review of such alternate protocols. Under this section, if a facility or mobile source wishes to use a quantification protocol that has not been approved by EPA, the protocol must go through a 30 day public comment period. The TCEQ will make the protocol available on the agency's website during the public comment period. The TCEQ then submits the protocol and any comments received to the EPA for a 45 day adequacy review. During this 45 day period, EPA can approve or disapprove the protocol through a letter to the TCEQ. Outside of the 45 day time period, the EPA will propose a disapproval in the **Federal Register** if appropriate. After EPA has proposed a disapproval in the **Federal Register**, the quantification protocol will not be accepted for use.

Integrity Element Four—Permanent. To satisfy the permanence element of the integrity principle, a compliance flexibility EIP must ensure that no emission increases occur over the time defined in the SIP. On a source-specific basis, the permanence expectations are met if the sources participating in the EIP commit to action or achieve reductions for a future period of time as defined in the EIP.

The ERC program meets the permanence expectation at both the programmatic and source-specific levels. The rules at sections 101.303(d) and 101.304(e) describe the certification procedures to ensure that ERCs and MERCs generated are permanent so that the reduction will be effective for the life of the source.

4. Does the ERC program violate the integrity of other programs?

In addition to determining the programmatic and source-specific integrity elements for an EIP, it is important to determine whether the EIP generates emission reductions in a manner consistent with other EIPs functioning in the same area. EPA published a final rule approving the HGB Mass Emissions Cap and Trade (MECT) program on November 14, 2001 (66 FR 57252). With this action, EPA approved the use of ERCs within the MECT at§ 101.356(h). Subsequent revisions to the MECT rules submitted on January 31, 2003, and December 6, 2004, have reorganized the MECT rules such that the provisions for ERC usage are now found at § 101.356(i), but the substance of the provision for ERC use in the MECT is the same as the version EPA approved.

The MECT program was adopted by Texas in December 2000 as a compliance mechanism for the stringent NO_X control requirements adopted under rules contained in the December 2000 revision to the HGB SIP. In addition to providing flexibility in complying with the NO_X control requirements, the MECT also provides a finite cap on NO_X emissions at a level demonstrated as necessary for the HGB area to attain the NAAQS for ozone. The amount of allowances (the authorization to emit one ton of NO_X) under the cap gradually decreases beginning in 2002 to the final cap level in 2007. The final 2007 cap level was developed through the Control Case modeling that included a controlled 2007 future case point-source emissions inventory along with the addition of emissions from NO_X increases permitted after 1997 and increases in NO_X emissions attributable to the use of banked discrete emission credits and ERCs.

Emission reduction credits may be converted into a yearly allocation of allowances under the MECT at the rate of one ERC to one allowance per year only if the ERCs were generated before December 1, 2000, and provided that:

1. The ERC is quantifiable, real, surplus, enforceable, and permanent as required in § 101.302 at the time the ERC is converted;
2. The ERC was generated in the HGB area;
3. The ERC was generated from a reduction in NO_X;
4. The ERC has not expired; and
5. The owner of the ERC has prior approval from the TCEQ Executive Director.

These ERCs, all generated before December 1, 2000, total 1.7 tons per day of additional NO_X emissions that have been included in the attainment demonstration by TCEQ.

TCEQ has also included a provision for ERC usage in the Highly-Reactive VOC Emissions Cap and Trade (HECT) program, submitted to EPA on December 17, 2004. The HECT is a mandatory cap on emissions of ethylene, propylene, 1,3-butadiene, and all isomers of butenes for covered facilities, at a site subject to 30 TAC Chapter 115, Subchapter H. The HECT has a provision to allow a facility to convert credits of less-reactive VOCs generated through the ERC rule into a yearly HRVOC allocation. ERCs eligible for this conversion must be generated:

1. From a reduction at a site in the HGB area;

2. From a reduction strategy implemented after December 31, 2004; and

3. From a reduction in VOC species other than those defined as HRVOCs under 30 TAC Chapter 115.10.

VOC reductions from the installation of best available control technology do not qualify for conversion into HRVOC allocations. Additionally, the ERCs must be real, quantifiable, surplus, enforceable, and permanent as specified in the ERC rule at § 101.302 at the time the ERC is converted. The conversion of less-reactive VOC ERCs into HRVOC allowances is limited to 5 percent of the site's initial HRVOC allocation and is based on the Maximum Incremental Reactivity (MIR) Scale.

EPA will evaluate the HECT and the generation of ERCs based on reactivity in a separate rulemaking (RME Dockets R06–OAR–2005–TX–0018 and R06–OAR–2005–TX–0033). The ERC rule does not specifically state that ERCs can be used in the HECT, but addresses this cross-over at section 101.306(a)(7) where ERCs can be used for compliance with other requirements as allowable within the guidelines of local, state, and federal laws. TCEQ has informed EPA in a letter dated September 8, 2005, that it will revise the language in section101.306 to specify that ERCs may be used within the HECT program as an annual allocation of allowances as provided under 30 TAC section 101.399.

The combination of the ERC and MECT and the ERC and HECT programs not only caps the NO_X or HRVOC emissions in the HGB area at a level demonstrated as necessary for attainment of the ozone standard, but also attempts to provide flexibility while ensuring protection of the HGB SIP.

5. What is EPA's analysis of the fundamental principle of equity?

The equity principle is composed of two elements—general equity and environmental justice.

Equity Element One—General Equity. General equity means that an EIP ensures that all segments of the population are protected from public health problems and no segment of the population receives a disproportionate share of a program's disbenefits.

The ERC program satisfies the general equity element. Consideration of health impacts from emission credit use is included throughout the ERC rule. A facility wishing to use reductions of one pollutant to meet the reduction requirement of another pollutant must use urban airshed modeling to obtain TCEQ and EPA approval. If the facility generating the reductions is located outside the United States, the substitution must result in a greater health benefit and be of equal or greater benefit to the overall air quality of the area. EPA approval is necessary any time a reduction from outside the nonattainment area is requested for use. We expect that such review would occur through a SIP revision. Stakeholder involvement and public participation is an additional measure to ensure adequate protection from disproportionate impacts. The public information requirements in section 101.302(h) and the information that must be submitted to the TCEQ for inclusion in the credit registry on the use and banking of ECs in sections 101.306 and 101.309 demonstrates the importance of public participation in the ERC program.

Equity Element Two—Environmental Justice. The environmental justice element applies if an EIP covers VOCs and could disproportionately impact communities populated by racial minorities, people with low incomes, or Tribes. EIPs that include hazardous air pollutants (HAPs) must also address the concerns described in Appendix 16.2 of the EIP Guidance (the ''HAP Framework''), which discusses how to prevent and/or mitigate impacts from trades involving HAPs, the need to make sufficient information available for meaningful review and participation, public participation, and periodic program evaluations.

Because the ERC program allows for the generation and use of ECs from VOCs and/or HAPs, we evaluate it with respect to the environmental justice element, including the HAP Framework. We conclude that the ERC program meets our expectations for environmental justice. First, as outlined above under General Equity, the ERC program provides for public participation. Second, the program satisfies the HAP Framework. It addresses the HAP Framework issues through the ERC audit program, under which TCEQ may discontinue trading of ECs as a remedy for problems in a localized area of concern; in public information requirements and the requirements for the credit registry on the use and banking of ECs; and through public participation requirements. TCEQ held four public hearings in the course of developing the program, and maintains a list of stakeholders who receive copies of all TCEQ rulemaking actions for comment and participation in development. Also, during implementation of the ERC program, the public has the opportunity to participate in the approval process for alternate quantification protocols, and in the periodic audit of the ERC program required by the rule.

As an added measure that demonstrates general equity and environmental justice, TCEQ has developed the Toxicological Risk Assessment (TARA) Effects Evaluation Procedure. Under this process, which is authorized under section 382.0518(b)(2) of the Texas Health and Safety Code, TCEQ may not grant a permit to a facility unless it is demonstrated that emissions will not have an adverse impact on public health and welfare. This demonstration is accomplished by (1) establishing off-property ground-level air concentrations of constituents resulting from the proposed emissions, and (2) evaluating these concentrations for the potential to cause adverse health or welfare effects. The TARA Effects Evaluation is used to evaluate the use of ECs in an air permit. The TCEQ guidance document ''How to Determine the Scope of Modeling and Effects Review for Air Permits'' (RG–324, Oct. 2001) has a detailed discussion of TARA Effects Evaluation procedures.

6. What is EPA's analysis of the fundamental principle of environmental benefit?

All EIPs must be environmentally beneficial, as demonstrated through achieving more rapid emission reductions or faster attainment than would have occurred without the EIP. The ERC program satisfies the environmental benefit principle by requiring a user of ECs to retire 10 percent more credits than are needed. Additionally, the approved EC generation strategies also provide an environmental benefit by achieving more rapid emission reductions than would have occurred without the ERC program. The approved EC generation strategies include permanent facility shutdowns that results in a loss of capability to produce emissions; the installation and operation of pollution control equipment that reduces emissions below the level required of the facility; a change in the manufacturing process that reduces emissions below the level required of the facility; a permanent curtailment in production that reduces the facility's capability to produce emissions; or pollution prevention projects that produce surplus emission reductions.

7. What is EPA's analysis of the use of international emission reductions and other reductions from outside the area of use?

Certain geographic restrictions apply to EC generation and use. These restrictions are found at section

101.302(f). Generally, only emission reductions generated in nonattainment areas can be certified. As a threshold requirement, an emission reduction must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the TCEQ Executive Director and EPA. In addition to this written approval, one of the following must occur:

- A demonstration must be approved by the Executive Director and EPA that shows that the emission reductions achieved in another county, State, or nation provide an improvement to air quality in the county of use; or
- The emission credit was generated in a nonattainment area that has an equal or higher nonattainment classification than the nonattainment area of use, and a demonstration has been approved by the Executive Director and EPA to show that the emissions from the nonattainment area where the emission credit is generated contribute to a violation of the NAAQS in the nonattainment area of use; or
- A facility using emission reductions generated outside the United States that have been determined by the Executive Director to be real, permanent, enforceable, quantifiable, and surplus to any applicable international, Federal, State, or local law and the result would provide a greater health benefit to the area as determined by the Executive Director; and the facility demonstrates that the use of the reduction does not cause localized health impacts; submits all supporting information for calculations and modeling and any additional information requested; and is located within 100 km of the Texas-Mexico border.

Although the threshold EPA approval requirement of section 101.302(f) ensures that EPA approval is necessary for any of the above types of trades, TCEQ has agreed to clarify the language in section 101.302(f) so that EPA approval is more clearly required for all transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another or from attainment counties into nonattainment areas.

EPA has addressed the possibility of cross-jurisdictional trades, such as those in section 101.302, in Appendix 16.16 of the Economic Incentive Program Guidance. Satisfaction of the provisions of Appendix 16.16 is necessary to ensure that cross-jurisdictional trades are consistent with the fundamental integrity, equity, and environmental benefit principles described in the EIP guidance. The EPA review and approval authority contained in section 101.302(f) will be the mechanism by which EPA ensures that inappropriate trades do not take place. In particular, EPA intends to require a further SIP revision (either a detailed trading program, such as an interstate MOU, or a trade-specific submission) before approving any international trades, interstate trades, or intrastate trades that involve reductions from beyond the nonattainment area.

International trades present an especially difficult case. For instance, currently there is no approvable mechanism for demonstrating that reductions made in another country are surplus or enforceable. Nonetheless, emission reductions in other countries could potentially offer substantial air quality benefits in the United States. In approving the ERCs rule, EPA is recognizing the concept of international trading and describing a framework (*i.e.*, the submission of a SIP revision demonstrating among other things the validity and enforceability of foreign reductions) for such trading, in the event that a suitable and approvable mechanism is ever developed for resolving concerns including enforceability and surplus. Until such a mechanism is developed and approved by EPA, however, EPA will not approve international trades under the ERCs rule.

8. What is EPA's analysis of the cross-referenced rule language?

The revisions to section 115.950, submitted by TCEQ on December 20, 2000, are approvable. This subsection cross-references the use strategies for ERCs and MERCs in section 101.306, which we are proposing to approve.

The definition of ''facility'' published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction, Subchapter A, section 116.10(4), submitted by TCEQ on July 22, 1998, is approvable. This definition is approvable as defining what is a ''facility'' for purposes of permitting under Chapter 116. This satisfies the provisions of 40 CFR—51.160(e) by identifying the types of facilities, building, structures, or installations which will be subject to review.

9. What is EPA's analysis of the ERC program with respect to section 110(l) of the Clean Air Act?

Section 110(l) of the Clean Air Act states:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

Thus, under section 110(l), this SIP revision must not interfere with attainment or reasonable further progress or any other applicable requirement of the Act.

As a general matter, the satisfaction of the environmental benefit principle and the other integrity principles applicable to trading programs will tend to demonstrate that a trading program will do no worse than maintain existing air quality. Accordingly, EPA has determined that discretionary EIPs that are consistent with the EIP Guidance are consistent with section 110(l):

> Congress did not address specific requirements for EIPs in the CAA. Consistent with our mandate, the EPA has interpreted what an EIP should contain in order to meet the requirements of the CAA. This document is a guidance document that sets forth EPA's non-binding policy for EIPs. This document does not represent final EPA action on the requirements for EIPs. Rather, this document identifies several different types of economic incentive programs, and proposes elements for each type that, if met, EPA currently believes would assure that the program would meet the applicable CAA provisions. The guidance phrases these elements in the imperative B that is, using the terms ''must'' or ''shall''. This is done only to signify that EPA would propose to approve a SIP submittal of a program containing the indicated elements on grounds that under section 110(l) of the CAA, the SIP revision does not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement.

(EIP Guidance, section 1.9.) Thus, if the ERC program is consistent with the EIP Guidance it will satisfy section 110(l). As explained throughout this document, we have determined that the ERC rule is consistent with the EIP Guidance. To further support this determination, we will discuss the rule in connection with specific locations and criteria pollutants.

As a preliminary matter, we note that a user of ECs must retire 10 percent more credits than are needed, which provides a built-in source of reductions under this program that would not occur without it. Further, emission reductions used to generate ECs are permanent, enforceable, and ongoing in nature, so that the environment will always experience the reduction.

We have also considered whether emissions increases resulting from the use of ECs have the potential to interfere with attainment. Because of the ongoing nature of the reductions that can generate an EC, an emissions increase

resulting from a traded credit will always be associated with a contemporaneous, and 10 percent greater, emissions decrease. One ozone precursor may also be used to meet the requirements for reductions of another precursor (a facility could use NO_X reductions to satisfy a VOC requirement or vice versa), subject to an urban airshed modeling demonstration and TCEQ Executive Director and EPA approval. In very limited cases, the rule allows for such interpollutant trading across the U.S.-Mexico border without specifically requiring urban airshed modeling, but any such trades would be subject to the EPA approval process described below. There remains, however, the question of whether geographic separation between the location of the reduction and increase from any given EC might interfere with attainment. We believe this problem will not occur with the ERC rule, because in the usual case reductions and associated increases will occur in the same nonattainment area. The rule does contain provisions for the use in a nonattainment area of reductions from outside that nonattainment area, but such use is subject to TCEQ Executive Director and EPA approval. EPA intends to address any such requests through a SIP revision, which would require a demonstration of consistency with section 110(l). TCEQ will also conduct an audit of the ERC program every three years. The audit will specifically evaluate the impact of EC generation and use on the State's attainment demonstration. If problems are identified, the TCEQ Executive Director may suspend or discontinue the trading of ECs as a remedy.

We believe that the structure of the ERC rule as discussed above is sufficient to ensure that the rule is consistent with section 110(l), but we have further considered the potential impact as to specific pollutants. Under the Texas program, ECs can only be generated for criteria pollutants (except lead) and precursors of criteria pollutants for which an area is designated nonattainment.

First, as to ozone, attainment demonstrations under the 8-hour standard currently in effect are not yet due. The only 8-hour ozone nonattainment areas in Texas at present are the Beaumont/Port Arthur (BPA), Dallas/Fort Worth (DFW), and HGB 8-hour ozone nonattainment areas. (El Paso was designated as serious under the revoked 1-hour ozone standard, but was designated as attainment for 8-hour ozone, with an obligation to submit a maintenance plan.) Until 8-hour attainment demonstrations are due, EPA believes that preservation of the status quo air quality while new plans are being developed will prevent interference with the States' obligations to develop timely attainment demonstrations and reasonable further progress plans and to attain as expeditiously as practicable. Accordingly, for 8-hour ozone nonattainment areas in Texas, EPA believes that a demonstration that this rule will not worsen existing air quality is sufficient. We conclude that the environmental benefit provided by the ERC program, as discussed above, is sufficient to demonstrate that this rule will not worsen existing air quality.

We note in addition that as to the HGB nonattainment area in particular, a fuller discussion of the section 110(l) analysis appears in EPA's evaluation of the HGB attainment demonstration submitted for the 1-hour ozone standard (RME Docket R06–OAR–2005–TX–0018). That rulemaking contains EPA's proposed determination that the area will attain the 1-hour ozone standard and that the current attainment strategy does not interfere with attainment of the 8-hour standard in the HGB area. In addition, EPA has already approved TCEQ's 1-hour reasonable further progress plan for HGB (70 FR 07407, February 14, 2005).

As to other criteria pollutants, El Paso is classified as nonattainment for carbon monoxide (CO) but has monitored attainment for approximately the past five years and is expected to submit a request for redesignation by the end of 2005. Also, El Paso is classified as nonattainment for particulate matter with a diameter of 10 micrometers and smaller (PM_{10}). We therefore consider whether the generation and use of ECs could interfere with attainment or reasonable further progress under the PM_{10} or CO standards. Because no ECs of any type have yet been generated in El Paso, any use of ECs there will require either the generation of ECs through reductions in that area, or the approval of ECs from elsewhere. In the first case, the reductions would have to occur before the associated increases from use of the ECs, and as already noted the reductions would have to exceed the increases by ten percent. In the second case, use of ECs from elsewhere would have to be based on a determination that such use would provide a benefit in the nonattainment area (and subject to EPA review through the SIP revision process, as noted above). In either case, therefore, we conclude that the use of ECs in El Paso will not interfere with attainment and reasonable further progress.

As to all other criteria pollutants, all areas of Texas are currently in attainment. ECs may only be generated and used for nonattainment pollutants in nonattainment areas, and so there will be no EC trades involving areas in attainment for the pollutant in question. We conclude that this rule should not interfere with attainment as to these other criteria pollutants. The reductions of NO_X in the BPA, DFW, and HGB nonattainment areas could include reductions in NO_2, a separate criteria pollutant from ozone. These potential NO_2 reductions will not interfere with attainment of the NO_2 NAAQS.

We have also considered whether potential uses of ECs are contrary to section 110(l) by allowing sources to exceed limits in their CAA Title V permits, which are ''applicable requirements'' under the Act. For the following reasons, we conclude that the rule does not violate section 110(l) in this respect. First, EPA has addressed the interface of Title V permits and trading programs in the EIP guidance, which provides:

> If a facility that has a title V operating permit wishes to participate in your approved EIP, you must modify the facility's operating permit to include the detailed compliance provisions necessary to assure compliance with the EIP. Thus, the permit becomes a valuable tool to ensure the source meets the requirements of the EIP.
>
> Once the permit includes terms and conditions necessary to implement the EIP (as described below), the source may typically make individual trades under the EIP without the need for future formal permit revisions. This is true because most trading activity under such a permit would already be addressed and allowed by the specific terms and conditions of the permit and such trading would not normally conflict with the permit. This is the principle expressed by section 70.6(a)(8) of the CFR, which states that permit revisions are not required for trading program changes that are ''provided for'' in the permit.

(EIP Guidance, Appendix 16.8). Texas has modified its Title V permit template so as to address the permissible use of ECs to meet Title V permit requirements. As further explained in the TSD for this action, we find that the Texas permit language satisfies the concerns identified in Appendix 16.8.

In reaching this conclusion, we also considered that a Title V permit is not itself a source of substantive limits. Rather, it incorporates applicable requirements under other permits and programs. In Texas, as elsewhere, many of the allowable emission levels in T5 permits are determined through New Source Performance Standards (NSPS), Best Available Control Technology (BACT), Lowest Achievable Emission

Rate (LAER), or National Emission Standards for Hazardous Air Pollutants (NESHAPs). The ERC rule does not authorize the use of ECs for compliance with any of these programs. The rule does allow ECs to be used for compliance with Reasonably Available Control Technology (RACT) standards, in accordance with EPA's guidance. Specifically, the guidance provides that ''[i]f your EIP allows sources to avoid direct application of RACT technology, your EIP must ensure that the level of emission reductions resulting from implementation of the EIP will be equal to those reductions expected from the direct application of RACT.'' EIP Guidance, Appendix 16.7. The Texas program ensures consistency with that element of the EIP guidance through the requirement that a user of ECs must retire 10 percent more credits than are needed. Accordingly, any use of ECs for RACT compliance will have been preceded by a ten percent greater reduction.

For the above reasons, and based also on the analysis in the HGB rulemaking, we conclude that the Texas ERC rule represents an environmental improvement on the status quo, and does not interfere with attainment, reasonable further progress, or any other requirement of the Act. TCEQ will need to evaluate EC generation and use for the BPA and DFW nonattainment areas in the appropriate attainment demonstrations and reasonable further progress plans, and in any future plans developed for El Paso.

D. Conclusion

EPA reviewed the ERC program revisions with respect to the concerns discussed in the EIP Guidance and the requirements of the Clean Air Act. We conclude that the ERC program is approvable, and propose to approve the revisions to sections 101.301, 101.306, and 101.309 submitted by TCEQ on January 31, 2003, for rule log number 2002–044–101–AI, and the revisions to sections 101.300, 101.302–101.304, and 101.311 submitted by TCEQ on December 6, 2004, for rule log number 2003–064–101–AI.

We have also reviewed the subsection in 30 TAC Chapter 115, which cross-references the ERC program, and have concluded that this subsection is approvable. We are proposing to approve the revisions to section 115.950 submitted by TCEQ on December 20, 2000, for rule log number 1998–089–101–AI. Because this section involves the use of discrete emission credits and emission credits for compliance, the use of discrete emission credits for compliance with Chapter 115 is not approved until the Discrete Emission Credit Banking and Trading program has been approved. The rules for discrete emission credit generation and use are being considered in a separate **Federal Register** action.

EPA has also reviewed the definition of facility provided in 30 TAC Chapter 116, and has concluded that this subsection is approvable. We are proposing to approve section 116.10(4) submitted by TCEQ on July 22, 1998, for rule log number 98001–116–AI.

II. General Information

A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by File ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official file. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

III. 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.*).

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: September 27, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–19997 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0029; FRL–7980–7]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Discrete Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to conditionally approve revisions to the Texas State Implementation Plan (SIP) concerning the Discrete Emission Credit Banking and Trading Program. Additionally, we are proposing approval of a subsection of Chapter 115 of the Texas Administrative Code (TAC), Control of Air Pollution from Volatile Organic Compounds, which cross-references the Discrete Emission Credit Banking and Trading Program. We are also proposing approval of a subsection of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, which provides a definition referred to in the Discrete Emission Credit Banking and Trading Program.

DATES: Comments must be received on or before November 4, 2005.

ADDRESSES: Submit your comments, identified by Regional Materials in EDocket (RME) ID No. R06–OAR–2005–TX–0029, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- Agency Website: *http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
- U.S. EPA Region 6 ''Contact Us'' web site: *http://epa.gov/region6/r6coment.htm*. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.
- E-mail: Mr. David Neleigh at *neleigh.david@epa.gov*. Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), at fax number 214–665–6762.
- Mail: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- Hand or Courier Delivery: Mr. David Neleigh, Chief, Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 am and 4 pm weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R06–OAR–2005–TX–0029. EPA's policy is that all comments received will be included in the public file without change, and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through RME, regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The RME website and the Federal regulations.gov 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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. Guidance on preparing comments is given in the **SUPPLEMENTARY INFORMATION** section of this document under the General Information heading.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. 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 RME or in the official file which is available at the Air Permitting Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 am and 4:30 pm weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley, Air Permitting Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue,

Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2115; fax number 214–665–6762; e-mail address *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Outline

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I. Discrete Emission Credit Banking and Trading Program

A. Proposed Action

1. What is EPA proposing to approve?

The EPA is proposing conditional approval of the Discrete Emission Credit Banking and Trading Program, referred to as the Discrete Emission Reduction Credit (DERC) program, enacted at Texas Administrative Code (TAC) Title 30, Chapter 101 General Air Quality Rules, Subchapter H, Division 4, sections 101.370–101.374, 101.376, 101.378, and 101.379. Also at this time, EPA is proposing approval of 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter J, Division 4, section 115.950 (''Use of Emissions Credits for Compliance''), which cross-references the DERC program. EPA is also proposing approval of the definition of ''facility'' published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, Subchapter A, section 116.10(4). These revisions were provided in SIP revisions dated July 22, 1998; December 20, 2000; July 15, 2002; January 31, 2003; and December 6, 2004.

2. What is a conditional approval?

Under section 110(k)(4) of the Clean Air Act EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within one year from the date of approval. If EPA determines that the revised rule is approvable, EPA will propose approval of the rule. If the State fails to meet its commitment within the one year period, the approval is treated as a disapproval. There are at least two ways that the conditional approval may be converted to a disapproval.

- If the State fails to adopt and submit the specified measures by the end of one year (from the final conditional approval), or fails to submit anything at all, EPA will have to issue a finding of disapproval but will not have to propose the disapproval. That is because in the original proposed and final conditional approval, EPA will have provided notice and an opportunity for comment on the fact that EPA would directly make the finding of disapproval (by letter) if the State failed to submit anything. Therefore, at the end of one year from the conditional approval, the Regional Administrator (RA) will send a letter to the State finding that it had failed to meet its commitment and that the SIP submittal is disapproved. The 18-month clock for sanctions and the two year clock for a Federal Implementation Plan (FIP) start as of the date of the letter. Subsequently, a notice to that effect will be published in the **Federal Register**, and appropriate language will be inserted in the Code of Federal Regulations (CFR). Similarly, if EPA receives a submittal addressing the commitment but determines that the submittal is incomplete, the RA will send a letter to the State making such a finding. As with the failure to submit, the sanctions and FIP clocks will begin as of the date of the finding letter.
- Where the State does make a complete submittal by the end of the one year period, EPA will have to evaluate that submittal to determine if it may be approved and take final action on the submittal within 12 months after the date EPA determines the submittal is complete. If the submittal does not adequately address the deficiencies that were the subject of the conditional approval, and is therefore not approvable, EPA will have to go through notice-and-comment rulemaking to disapprove the submittal. The 18-month clock for sanctions and the two year clock for a FIP start as of the date of final disapproval.

In either instance, whether EPA finally approves or disapproves the rule, the conditional approval remains in effect until EPA takes its final action. Note that EPA will conditionally approve a certain rule only once. Subsequent submittals of the same rule that attempt to correct the same specifically identified problems will not be eligible for conditional approval.

3. What future actions are necessary for the DERC rule to fully meet EPA's expectations?

TCEQ has submitted a commitment letter to Region 6 outlining the steps that will be taken to achieve full approval. This letter, dated September 8, 2005, can be found in the RME docket. The commitments are:

1. Revising the language in section 101.373:

a. To prohibit the future generation of discrete emission reduction credits from permanent shutdowns;

b. To allow discrete emission reduction credits generated from permanent shutdowns before September 30, 2002, to remain available for use for no more than five years from the date of the commitment letter; and

2. TCEQ will perform a credit audit to remove from the emissions bank all discrete emission reduction credits generated from permanent shutdowns after September 30, 2002.

3. Revising the language in sections 101.302(f), 101.372(f)(7), and 101.372(f)(8) to clarify that EPA approval is required for individual transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another or from attainment counties into nonattainment areas.

4. TCEQ will revise Form DEC–1, Notice of Generation and Generator Certification of Discrete Emission Credits; Form MDEC–1, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits; and Form DEC–2, Notice of Intent to Use Discrete Emission Credits, to include a waiver to the Federal statute of limitations defense for generators and users of discrete emission credits.

5. TCEQ will maintain its current policy of preserving all records relating to discrete emission credit generation

and use for a minimum of five years after the use strategy has ended.

Additionally, TCEQ has agreed to comply with these commitments during the conditional approval period. Specifically, TCEQ will not approve any trades involving the types of reductions described in item (3) above, will not approve any use of discrete shutdown credits that were generated after September 30, 2002, and will require the waiver described in item (4) above for generators and users of discrete emission credits.

TCEQ will submit these revisions to EPA on or before December 01, 2006. The conditional approval will automatically become a disapproval if the revisions are not completed and submitted to EPA by this date.

B. Summary of the Discrete Emission Credit Banking and Trading Program

1. How does the DERC program work?

The DERC rules establish a type of Economic Incentive Program (EIP), in particular an open market emission trading program as described in EPA's EIP Guidance document, ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001). In an open market trading (OMT) program, a source generates short-term emission credits (called discrete emission credits, or DECs, in the Texas program) by reducing its emissions. Discrete emission credit is a generic term that encompasses reductions from stationary sources (discrete emission reduction credits or DERCs), and reductions from mobile sources (mobile discrete emission reduction credits or MDERCs). The source can then use these DECs at a later time, or trade them to another source to use at a later time. The trading program assumes that many sources will participate and continuously generate new DERCs or MDERCs to balance with other sources using previously generated discrete credits. DECs are quantified, banked and traded in terms of mass (tons) and may be generated and used statewide. Reductions of all criteria pollutants, with the exception of lead, may be certified as DECs.

This program provides flexibility for sources in complying with certain State and Federal requirements. Traditionally DECs have been used for alternate RACT compliance for volatile organic compounds (VOCs) and nitrogen oxides (NO_X). The DERC rule also allows DECs to be used to exceed allowable emission levels, as new source review (NSR) offsets, and in lieu of allowances in the Houston/Galveston/Brazoria NO_X MECT program.

In this action, when we refer to this program as ''the DERC rule'' or ''the DERC program'' we are speaking of the entire Discrete Emission Credit Banking and Trading program, which encompasses both DERCs and MDERCs.

2. What is the history of the DERC program?

The DERC program was first adopted by the State at 30 TAC Section 101.29 on December 23, 1997. Effective January 18, 2001, Section 101.29 was repealed and Chapter 101, Subchapter H, Divisions 1, 3, and 4 were created. This action created separate divisions for the ERC, Mass Emissions Cap and Trade (MECT) in the Houston/Galveston/Brazoria (HGB) area, and DERC programs. Amendments to the MECT were adopted on October 18, 2001; these amendments also included changes made primarily for clarification to Sections 101.370, 101.372, and 101.373 in the DERC program. The DERC program was amended again effective April 14, 2002, to include the provisions in Texas Senate Bill 1561 for air emissions trading across international boundaries. The submittal, which was effective on January 17, 2003, completely reorganized the DERC and ERC program rules into more standardized formats parallel to each other, with a rule structure which followed a process of recognizing, quantifying, and certifying reductions as credits while explaining the guidelines for trading and using creditable reductions. The most recent submittal of December 06, 2004, amended Sections 101.370, 101.373, 101.373, and 101.376. The DERC program adoption and each of the subsequent revisions were submitted to EPA for approval into the SIP; however, this proposed conditional approval is the first time we have acted on this program.

C. EPA's Analysis

1. How did EPA review and evaluate the DERC program?

Generally, SIP rules must be enforceable and must not relax existing requirements. See Clean Air Act sections 110(a), 110(l), and 193.

A guidance document that we used to define evaluation criteria is ''Improving Air Quality with Economic Incentive Programs'' (EPA–452/R–01–001, January 2001) (EIP Guidance). This guidance applies to discretionary economic incentive programs (EIPs) adopted to attain national ambient air quality standards (NAAQS) for criteria pollutants, but the EIP Guidance is not EPA's final action on discretionary EIPs. Final action as to any such EIP occurs when EPA acts on it after its submission as a SIP revision. Because the EIP Guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether potential approvability issues arise. A more detailed review of the DERC program as compared to the EIP Guidance is in the Technical Support Document (TSD) for the TCEQ Discrete Emission Credit Banking and Trading Program. The TSD is available as specified in the section of this document identified as **ADDRESSES.**

2. What criteria did EPA use to analyze the DERC program?

Fundamental principles that apply to all EIPs are integrity (meaning that credits are based on emission reductions that are surplus, enforceable, quantifiable, and permanent), equity, and environmental benefit. These fundamental principles can apply to an EIP in its entirety (the programmatic level) or to individual sources (the source-specific level). EPA evaluated the DERC program against these three fundamental principles, specific concerns applicable to open market trading programs, and applicable Clean Air Act requirements. Our complete analysis of the DERC program is contained in the TSD for this action.

3. What is EPA's analysis of the fundamental principle of integrity?

The fundamental principle of integrity consists of the qualities of surplus, enforceable, quantifiable, and permanent.

Integrity Element One—Surplus

The element of surplus does not apply to the DERC program in its entirety because OMT programs are not designed to achieve program-wide emission reductions. However, the element of surplus does apply at the source-specific level. Emission reductions are surplus if the reductions are not presently relied upon in any other air quality-related programs such as the SIP, SIP-related requirements such as transportation conformity, other adopted TCEQ measures not in the SIP, Federal rules that focus on reducing precursors of criteria pollutants such as new source performance standards, or a consent decree. Emission reductions measured by sources on a retrospective basis are surplus if the source's actual emissions are below its baseline allowable or historical actual emissions—whichever is lower—and the retrospective inventories reflect actual emission information as appropriate.

Sections 101.372(c)(1)(A) and (c)(2)(A) of the DERC rules require that a reduction be real, quantifiable, and surplus at the time the DERC or MDERC is generated. Surplus is defined in section 101.370(33) as an emission reduction that is not otherwise required of a facility or mobile source by state or Federal law, regulation, agreed order, and not otherwise relied on in the SIP. Thus, the DERC rule requires that at the time of generation, reductions satisfy the source-specific integrity element of surplus. Requirements for emission reduction baselines are specified in sections 101.373(b) and 101.374(b).

Integrity Element Two—Enforceable

Emission reductions use, generation, and other required actions in the EIP are enforceable on a programmatic basis if they are independently verifiable, define program violations, and identify those liable for violations. For enforceability, both the State and EPA should have the ability to apply penalties and secure appropriate corrective actions where applicable. Citizens should also have access to all the emissions-related information obtained from the source so that citizens can file suits against sources for violations. Required actions must be practicably enforceable in accordance with other EPA guidance on practicable enforceability. At the source-specific level, the source must be liable for violations, the liable party must be identifiable, and the State, the public, and EPA must be able to independently verify a source's compliance. Additionally, in OMT programs owners/operators of sources generating OMT credits must ensure the truth and accuracy of statements regarding actions taken to generate discrete credits and are liable for meeting their emission limits. Owners/operators of sources using OMT credits must ensure the validity of discrete credit generation and use and are liable for meeting their emission limits. The EIP Guidance outlines enforcement elements common to all trading EIPs in Chapter 6.0. In addition to addressing the programmatic and source-specific enforcement provisions discussed above, trading EIPs must incorporate provisions for assessing liability, provisions to assess penalties against participating sources, and provisions for sources with title V permits.

The monitoring and testing protocols established in 30 TAC Chapters 115 and 117 are adequate for independent verifications of emission reductions certified as DERCs or MDERCs and for demonstrating practicable enforceability. The DERC rule identifies those liable at section 101.372(l), and information to be made available to the public/citizens is addressed at section 101.372(i). The DERC rule does provide in section 101.372(l)(2) that a user is in violation of the rule if the user does not possess enough DECs to cover the compliance need for the use period. If the user possesses an insufficient quantity of DECs to cover its compliance need, the user will be out of compliance for the entire use period. Each day the user is out of compliance may be considered a violation.

The application of penalties or obtaining corrective action and citizen filing of lawsuits are not addressed in the DERC rules. Texas enforcement provisions are not typically in the State's individual rules but are separately codified. Texas Water Code Chapter 7 contains the State's statutory provisions for enforcement of the DERC program. In particular, TWC section 7.051 provides for the assessment of administrative penalties by the TCEQ, and section 7.032 provides for injunctive relief by the TCEQ. The TCEQ enforcement rule at 30 TAC section 70.5 incorporates remedies found in the State statutes (Texas Water Code and the Texas Health and Safety Code), and permits referrals to EPA for civil, judicial or administrative action. It is our conclusion that TCEQ has adequate legal authority to enforce its DERC program. Once we approve the DERC program into the SIP, EPA will be able to enforce it under section 113 of the Clean Air Act.

For the above reasons, and as further explained in the TSD, EPA has concluded that the DERC program is consistent with Clean Air Act requirements and EIP Guidance expectations for the integrity element of enforceability.

Integrity Element Three—Quantifiable

On a programmatic basis, emissions and emission reductions attributable to an EIP are quantifiable if the source can reliably and replicably measure or determine them. The generation or use of emission reductions by a source or group of sources is quantifiable on a source-specific basis if each source can reliably calculate the amount of emissions and/or emission reductions occurring during the implementation of the program, and replicate the calculations. The EIP Guidance further states that when quantifying results, sources must use the same methodology used to measure baseline emissions, unless there are good technical reasons that this approach is not appropriate. In OMT EIPs, sources must quantify their activity level and their historical, actual, and allowable emission rates per activity levels; OMT credit generators must quantify their emissions before and during implementation of the reduction strategy; and OMT credit users must quantify the amount of credits they will need to cover their total emissions when using discrete credits. Common elements for quantifying results of an EIP are included in Chapter 5.0 of the EIP Guidance. All EIPs should incorporate provisions for predicting results, addressing uncertainty, approving quantification protocols, and emission quantification methods.

For a reduction to be certified as a DEC, the reduction must be real, quantifiable, and surplus at the time the DEC is generated. Quantifiable is defined as an emission reduction that can be measured or estimated with confidence using replicable methodology under section 101.370(25). The emission quantification provisions established in 30 TAC Chapters 115 and 117 are sufficient to reliably and replicably measure the emission reduction. The DERC program definition of quantifiable and the quantification provisions above are sufficient to satisfy the quantifiability requirements at the programmatic and source-specific levels. Additionally, generators/users wanting to use quantification protocols alternate to 30 TAC Chapter 115 and Chapter 117 must follow the quantification requirements at section 101.372(d)(1)(C). EPA approval of such alternate protocols is required. The formulas used to calculate DERC generation, DECs needed, and DECs used incorporate the use of the baseline, actual, and allowable activity levels as applicable. The calculation for DERC generation includes the difference between the baseline emission rate and the emission reduction strategy emission rate. This ensures that the DERC generator quantifies their emissions before and during implementation for the reduction strategy. Section 101.376(d)(1)(D) requires that the application to use DECs include the amount of DECs needed. For the above reasons, and as further explained in the TSD, EPA has concluded that the DERC program is consistent with Clean Air Act requirements and EIP Guidance expectations for the integrity element of quantifiability.

Integrity Element Four—Permanent

To satisfy the EIP Guidance expectations for permanence, a compliance flexibility EIP must ensure that no emission increases (compared to emissions if there was no EIP) occur

over the time defined in the SIP. On a source-specific basis, the permanence expectations are met if the sources participating in the EIP commit to actions or achieve reductions for a future period of time as defined in the EIP.

The DERC certification procedures under section 101.373(d) ensure that the credits generated are permanent, thus ensuring that there were no increases in emissions during the DERC generation period. Similar provisions are provided for MDERC certification in section 101.374(e).

4. Will the DERC program violate the integrity of the MECT program?

In our initial MECT approval (66 FR 57252, Nov. 14, 2001), EPA deferred action on the use of DERCs and MDERCs for compliance with the MECT until our action on the DERC rule. In addition to the original MECT submission, TCEQ has submitted revisions to section 101.356 twice since EPA's approval of the MECT program. In this document, we are reviewing the use of DERCs and MDERCs in TCEQ's MECT program for the Houston/Galveston/Brazoria (HGB) ozone nonattainment area. We will review and act on the revisions to the MECT program in a separate action (RME Docket R06–OAR–2005–TX–0023). The use of DERCs and MDERCs in the MECT program will not be Federally approved until the approval of both the DERC rule and the revisions to the MECT program.

The DERC and MECT programs are OMT and multi-source cap-and-trade programs, respectively, as described in the EIP Guidance. Section 4.1 of the EIP Guidance explains that certain types of EIPs may not be combined because their characteristics and requirements are incompatible and cites OMT and multi-source cap-and-trading as an example of such incompatible programs. Therefore, the fact that the MECT program provides for the use of DERCs and MDERCs in lieu of allowances at section 101.356(h), with corresponding provisions in the DERC rule at section 101.376(b), is contrary to the general statement in the EIP Guidance about the incompatibility of OMT and multi-source cap-and-trade programs.

The EIP Guidance discourages the use of OMT credits in a multi-source cap-and-trade program based on concerns that the use of OMT credits in the cap program could potentially undermine the integrity of the cap, thus preventing the goals that the cap was established to achieve. EPA is concerned that including OMT credits in a cap-and-trade system could lead to:

- The possibility that more OMT credits will be used in a given year than are generated;
- The possibility that sources will shift production from one source to another, generating credits at the reduced source while no real net benefit in air quality is achieved; and
- The possibility that reductions at unregulated sources will not be real reductions and that they will be used to offset increases at regulated sources.

When a program includes elements that are not consistent with the approaches outlined in our guidance, EPA may still approve the rule if it is consistent with CAA requirements and the rationales underlying the provisions in EPA guidance. In this case, we must determine whether the use of OMT credits (DERCs or MDERCs) in lieu of allowances will, because of the above concerns, undermine the goal of the MECT program, which is attainment of the one-hour ozone standard in the HGB area. EPA should also consider whether there are adequate safeguards to ensure that the additional flexibility provided by the interplay between the DERC and MECT programs will not undermine the HGB reasonable further progress plan and attainment demonstration.

Regarding the HGB reasonable further progress plan, we approved the plan on February 14, 2005 (70 FR 07407). The HGB area met its rate of progress (ROP) target by a wide margin (over 100 tons per day) so the institution of DERCs in the MECT would not be expected to interfere with ROP.

As for the attainment demonstration, the reduction in industrial NO_X emissions relied on in it is achieved by the MECT program, which provides a cap on NO_X emissions. Beginning in 2002, the amount of allowances (the authorization to emit one ton of NO_X during a control period, which is the calendar year) under the cap decreases to the final cap level in 2007. The final 2007 cap level was set, based on photochemical modeling and other evidence, at a level determined necessary for the area to meet the one-hour ozone standard. Even after the change from 90 percent to 80 percent NO_X control strategy, the final MECT level is among the most stringent levels of NO_X controls on industrial emissions in the United States.

Because of the stringency of the MECT NO_X controls, Texas linked the DERC and MECT programs, in an effort to provide additional flexibility to sites subject to the program while encouraging the development and use of cleaner technologies to reduce NO_X emissions from sources not covered by the cap-and-trade program. Only DERCs and MDERCs generated in the HGB area are available for use in lieu of allowances.

At the time the MECT rules were developed, the number of DERCs available for use in the HGB area totaled over 37,000 tons (all generated by stationary sources; no MDERCs had been generated). Additionally, sources had the ability to make early reductions and continue banking DERCs until the January 1, 2002, implementation date of the MECT. After implementation of the MECT, sources subject to the cap no longer had the ability to generate DERCs because those reductions would take the form of unused allowances. The potential for capped sites to hold these banked DERCs for use in 2005 and beyond was significant enough to negatively impact the HGB ROP and attainment demonstration. To guard against more DERCs being used in a given year than are being generated, which might affect the goal of attainment, Texas included the following provisions in the MECT rule limiting the use of NO_X DERCs in lieu of allowances.

First, beginning in 2005, use of DERCs within the MECT is limited to 10,000 DERCs collectively for all sites within the HGB area. This provision eliminates the potential for sites subject to the MECT to use a large quantity of DERCs in a single year and negatively impact the HGB ROP plan and attainment demonstration. All requests to use DERCs (or MDERCs) in the MECT must be made by October 1 of the control period for which the DERCs (or MDERCs) would be used. In terms of the 10,000 DERC limit, TCEQ will approve requests to use DERCs in the amount of 250 tons or less for a given control period. After October 1, when all requests to use DERCs have been received, TCEQ determines how to respond to any requests to use DERCs in an amount exceeding 250 tons. TCEQ may reduce any such request so that the total amount of all DERCs used collectively does not exceed 10,000. If all the requests to use DERCs in a given control period are less than the 10,000 limit, TCEQ will then address requests for more than 250 tons. For these requests, TCEQ determines the number of remaining DERCs under the 10,000 limit that were not approved in the requests of 250 tons or less. These extra DERCs may be apportioned based on the percentage of DERCs in excess of 250 requested for use by those sites relative to the total amount of extra DERCs available.

Second, depending on when the DERCs were generated, the MECT rule requires the use of DERCs at specified

ratios. Beginning in 2005, DERCs generated before January 1, 2005, are required to be used at a ratio of four DERCs to one allowance. The ratio of DERCs to allowances increases to a 10 to 1 ratio for DERCs generated before 2005 and used in the 2007, or subsequent, control periods. For example, if DERC usage equaling the full 10,000 limit is approved for use in the 2007 control period, the overall cap would be increased by 1,000 allowances. Any DERCs generated after January 1, 2005, are available for use within the MECT at a one to one ratio, but are still included in the 10,000 DERC collective limit. We believe these ratios guard against the possibility that the availability of historic reductions would permit the use of more DERCs in a year than are generated, which could interfere with attainment or reasonable further progress.

As a further safeguard against the possibility of undermining the attainment demonstration by allowing the use of more DERCs in any given year than are generated, Texas added an additional 2.7 tons per day into the attainment model beyond the emissions that would be allowed based on source allocations. This additional 2.7 tons per day represents the maximum amount of pre-2005 DERCs available for use in the attainment year 2007. To arrive at this number, TCEQ divided the 10,000 DERC limit by 10 (the 2007 reduction ratio) and then by 365 (days per year) to yield a total of 2.7 tons per day that could be reintroduced into the cap. DERCs generated after 2005 by sources outside of the cap could not be quantified as those reductions would be generated through voluntary measures. TCEQ therefore assumed that all DERCs that would be used in the 2007 control period were pre-2005 DERCs. Including these added emissions in the attainment modeling is analogous to cap-and-trade programs that set aside a percentage of the modeled emissions for new source growth or other purposes.

The MECT program also provides that MDERCs can be used in lieu of allowances at a ratio of one MDERC to one allowance. MDERCs are not included in the 10,000 DERCs limit in any given year. TCEQ incorporated MDERCs into the MECT to provide incentives for mobile reductions. Although there is no set limit for MDERC usage under the MECT, from our experience with open market trading programs, we can reasonably predict that a relatively small quantity of MDERCs will be generated. Consistent with our prediction, we note that only 60 tons of NO_X MDERCs have been banked as of August 1, 2005.

TCEQ has also committed to making certain revisions to the DERC program to ensure that DECs used are real and surplus, consistent with the assumptions in the attainment demonstration. These revisions will include:

- Prohibiting the generation of DERCs from permanent shutdowns;
- Ensuring that reductions can only come from process changes or the installation of control equipment that result in less emissions per unit of production, thus preventing reductions from production shifting as a method of DEC generation;
- Clarifying provisions that allow for public comment and EPA approval of quantification protocols to ensure that the reductions used for DEC generation are quantifiable.

Additionally, section 101.363 requires TCEQ to audit the MECT program every three years. If the use of DERCs or MDERCs is shown to negatively impact attainment, TCEQ will remove this flexibility from the program.

With the restrictions outlined above, we believe that using DERCs and MDERCs in lieu of allowances provides additional flexibility in compliance with the MECT program without undermining the goal of attaining the one-hour ozone standard in the HGB area. EPA also believes that the restrictions placed on the use of DECs in the MECT will prevent such use from damaging the integrity of the MECT program and the HGB attainment demonstration. Because the basis for the use of DECs in the MECT is, in part, the modeling and attainment demonstration for the HGB area, EPA cannot grant a final approval of this provision of the MECT program until EPA issues a final approval of the attainment modeling provided as a mid-course review SIP revision. The attainment demonstration and MECT revisions are being concurrently proposed for approval (RME Dockets R06-OAR–2005-TX–0018 and R06-OAR–2005-TX–0023).

5. What is EPA's analysis of the fundamental principle of equity?

The equity principle is composed of two elements—general equity and environmental justice.

Equity Element One—General Equity

General equity means that an EIP ensures that all segments of the population are protected from public health problems and no segment of the population receives a disproportionate share of a program's disbenefits. OMT EIPs should specifically protect communities from disproportionate impacts from emission shifts and foregone emission reductions.

Consideration of health impacts from DEC use are included throughout the DERC rule. A facility wishing to use reductions of one pollutant to meet the reduction requirement of another pollutant must use urban airshed modeling to obtain TCEQ and EPA approval. If the facility generating the reductions is located outside the United States, the substitution must result in a greater health benefit and be of equal or greater benefit to the overall air quality of the area. Once the TCEQ meets the commitments outlined earlier, EPA review and approval will be required any time a reduction generated outside the United States is requested for use. EPA intends to address any such requests through a SIP revision, which will provide an opportunity for public participation. The public information requirements in section 101.372(h) and the information that must be submitted to the TCEQ for inclusion in the credit registry on the use and banking of DECs in sections 101.376 and 101.379 demonstrates the importance of public participation in the DERC program.

Equity Element Two—Environmental Justice

The environmental justice element applies if the EIP covers VOCs and could disproportionately impact communities populated by racial minorities, people with low incomes, and/or Tribes. EIPs that include hazardous air pollutants (HAPs) must also satisfy the expectations of Appendix 16.2 of the EPA EIP Guidance, which addresses prevention and/or mitigation of impacts from potential or actual trades involving HAPs, sufficient information made available for meaningful review and participation, public participation, and periodic program evaluations. OMT EIPs should also protect communities of concern from disproportionately high and adverse impacts from emission shifts and foregone emission reductions.

Because the DERC program allows for the generation and use of DECs from VOCs and/or HAPs, the rule must be evaluated against environmental justice expectations. The DERC rule satisfies all elements of the HAP Framework. For compliance with the prevention and/or mitigation of potential impacts, the TCEQ has placed limits on NO_X and VOC DEC usage in ozone nonattainment areas and similar DEC usage limits in attainment or unclassified areas to exceed permit allowables. Additionally, the trading of DECs may be discontinued if the program audit identifies problems in a localized area of

concern. The TCEQ addresses the expectations for sufficient information made available for meaningful review and participation by requiring under section 101.372(i) that all information submitted with notices, reports, and trades regarding the nature, quantity of emissions, and sales price for DECs is public information. This information is available upon request or on the TCEQ website. Public participation is an integral feature of the DERC rule in the design, implementation, and evaluation of the program. During the development of the SIP revisions under consideration in this action, the TCEQ held four public meetings in Austin, Channelview, and Houston, TX. The TCEQ also has an extensive stakeholder list of approximately 150 contacts who receive copies of all TCEQ rulemaking actions for comment and participation in development. The public also has the opportunity to comment on quantification protocols used under section 101.372(d) and has the ability to review the program evaluations under section 101.379.

As an added measure that demonstrates general equity and environmental justice, TCEQ has developed the Toxicological Risk Assessment (TARA) Effects Evaluation Procedure. Under this process, which is authorized under section 382.0518(b)(2) of the Texas Health and Safety Code, TCEQ may not grant a permit to a facility and a facility may not begin operating unless it is demonstrated that emissions will not have an adverse impact on public health and welfare. This demonstration is accomplished by (1) establishing off-property ground-level-air concentrations of constituents resulting from the proposed emissions, and (2) evaluating these concentrations for the potential to cause adverse health or welfare effects. The TARA Effects Evaluation is used to evaluate the use of DECs in an air permit. The TCEQ guidance document ''How to Determine the Scope of Modeling and Effects Review for Air Permits'' (RG–324, Oct. 2001) has a detailed discussion of the TARA Effects Evaluation procedures.

6. What is EPA's analysis of the fundamental principle of environmental benefit?

All EIPs must be environmentally beneficial and can demonstrate this principle through more rapid emission reductions or faster attainment than would have occurred without the EIP. The DERC EIP meets the expectations for the environmental benefit principle. The ability to generate DECs provides an incentive for early compliance and more rapid emission reductions. Additionally, users of DECs must retire an additional 10 percent of DECs as an environmental benefit under section 101.376(d)(2)(D).

7. What is EPA's analysis of the use of discrete emission credits for nonattainment new source review offsets?

Appendix 16.14 of the EIP Guidance outlines EPA's expectations for the use of emission credits in the NSR program. In addition to meeting the requirements of the NSR program, a source wishing to use OMT credits to meet NSR offset requirements must:

- Meet all other OMT requirements.
- Meet the geographic limitation and other criteria contained in section 173 of the CAA.
- Obtain sufficient OMT credits for at least one year of operation before receiving its permit.
- Commit in its NSR permit to obtain sufficient additional OMT credits to cover each subsequent year of operation by December 31 of the previous year. This means that the OMT credits used for NSR offsets must be obtained in advance of the year for which they will be used.
- Ensure that emissions reductions used as OMT credits are not otherwise required by the CAA.

The DERC program meets the requirements of an OMT program, as shown in the TSD for this action. Table IV–3 of the TSD specifically addresses how sources demonstrate that DECs are surplus and not otherwise required by the CAA. Section 101.376 of the DERC program provides that DECs can be used as NSR offsets if the following requirements are met:

- The user must obtain the executive director's advance approval covering use of specific DECs for at least one year of operation of the new or modified facility;
- The amount of DECs needed for NSR offsets equals the quantity of tons needed to achieve the maximum allowable emission level set in the user's NSR permit. The user must also purchase and retire enough DECs to meet the offset ratio requirement in the user's ozone nonattainment area. The user must purchase and retire either the environmental contribution of 10 percent or the offset ratio, whichever is higher; and
- The NSR permit must meet the following requirements:
- The permit must contain an enforceable requirement that the facility obtain at least one additional year of offsets before continuing operation in each subsequent year;
- Before issuance of the permit the user must identify the DECs; and
- Before start of operation the user must submit a completed DEC–2 Form, Notice of Intent to Use Discrete Emission Credits, along with the original certificate.

The structure of the DERC program also addresses the requirements in section 173 of the CAA concerning NSR offsets. In particular, section 173(a)(1)(A) requires that ''by the time the source is to commence operation'' the total allowable emissions in the area must be less than total emissions as of the time of the application to construct, so as to represent reasonable further process under section 171. Further, section 173(c) requires that by the time the source commences operation its new emissions must be offset by ''actual'' reductions in the area. Thus, as to offsets, section 173 requires that emission reductions occur in sufficient quantity to ensure that new or modified sources do not add to the total emissions in the airshed.

Because OMT programs such as the DERC program provide for banking and trading of reductions that occur over a discrete span of time, it is possible that when they are used as NSR offsets such reductions may have occurred several years before the commencement of the new emissions that they are being used to offset. It is important that such time lags between generation of the DECs and their use as offsets not interfere with the purposes of the NSR program. These purposes include ensuring that new sources in nonattainment areas do not significantly add to the overall level of emissions in the area.

The ultimate test as to whether offsetting emissions reductions are sufficient under section 173(a)(1)(A) is whether they represent ''reasonable further progress as defined in section 171.'' The definition of ''reasonable further progress'' in section 171(1) plainly refers to the air quality goal of attainment of the NAAQS. Accordingly, real reductions should be the focus. We consider banked DERCs and MDERCs to be real reductions. Therefore, we only need to determine whether the potential time lag between generation and use of DERCs and MDERCs as offsets may interfere with attainment or otherwise impede the achievement of the goals of the NSR program.

We do not expect that many sources will choose to use DECs for NSR offsets. Emission credits representing ongoing, perpetual reductions—such as the credits generated under the 30 TAC Chapter 101, Subchapter H, Division 1 Emission Credit Banking and Trading program—are the traditional choice for

NSR offsets. By contrast, EPA believes that few DECs will be used as offsets, because few facilities will want to face potentially having to shut down if no credits are available in later years. We note that since the DERC program began operation in 1997 no source has applied to use DECs as NSR offsets. Nonetheless, we are evaluating the potential impact of usage of this feature of the DERC program. We conclude that the program is consistent with section 173 and NSR goals, for the following reasons.

A. Substantial Likelihood of Continuing Reductions in Each Nonattainment Area

First, and most important, we expect that, under the DERC program, new discrete emission reductions, and other reductions that are equivalent to discrete reductions, will be generated on an ongoing basis. The generation of new reductions is important to counterbalance the potential effect of the use as offsets of reductions that took place entirely in the past. If new reductions are generated regularly, then the system as a whole will satisfy the section 173 offset requirements even if some of the DERCs and MDERCs in the system are from previous years.

In each of the nonattainment areas in Texas where DERCs and MDERCs might be used as offsets, there is a reasonable basis to conclude that DERCs and MDERCs will be generated on a recurring basis at least until the area reaches attainment. Because of the expected low utilization of DERCs and MDERCs as offsets, it is not necessary to show that DERCs and MDERCs will be generated in quantities equal to existing banked quantities—a much smaller amount of recurring generation will be sufficient. We will address each of the nonattainment areas in Texas separately.

Houston/Galveston/Brazoria (HGB) 8-Hour Ozone Nonattainment Area

The HGB area is a moderate nonattainment area for ozone under the 8-hour standard. Its attainment deadline is 2010. In the HGB area, the existence of a robust trading market, with credits that are for relevant purposes fungible across several programs, leads EPA to conclude that additional reductions may reasonably be expected in the future. The NO_X Mass Emissions Cap and Trade (MECT) program and the large and diverse universe of sources will ensure that a robust trading market will exist until the area reaches attainment. Analysis of the HGB 2002 emissions inventory shows that for VOC emissions, approximately 41 percent of the inventory (239 tpd) is attributable to area sources, 23 percent (136 tpd) is attributable to point sources, 20 percent (115 tpd) is attributable to onroad mobile sources, and 16 percent of the inventory (93 tpd) is attributable to nonroad mobile sources. For NO_X emissions, approximately 35 percent of the inventory (398 tpd) is attributable to nonroad mobile sources, 30 percent (338 tpd) is attributable to point sources, 28 percent of the inventory (323 tpd) is attributable to onroad sources, and 8 percent (87 tpd) is attributable to area sources. (Please note that the emissions inventory data above is presented only for illustrative purposes. EPA is not proposing action on the 2002 emissions inventory in this document.) Typical point sources in the HGB area include refineries, chemical facilities, and electric generating facilities.

The MECT program applies to all sites in the HGB area with an uncontrolled design capacity to emit 10 or more tons of NO_X per year. The MECT is a declining cap: the first phase of NO_X reductions required under the cap was in 2002, and has been followed by step-downs that will continue through 2007. All sites subject to the MECT had the option of complying early and generating DERCs up to the 2002 start date. Since 2002, any reductions these sites make have been considered unused allowances under the MECT program, instead of being banked as DERCs. Sites participating in the MECT also have the option to use banked DERCs in lieu of MECT allowances. Additionally, sources not subject to the MECT (*e.g.*, mobile sources and area sources) can still generate DERCs in accordance with the generation strategies in the DERC rule. Therefore, we conclude, as to NO_X, that the emissions increases at sources that have used DERCs generated in the past for offsets will be offset by reductions in the future that will occur as unused allowances.

With regard to VOCs, TCEQ has also adopted two rules for controlling emissions of highly reactive volatile organic compounds (HRVOCs) in the HGB area. The short-term limit on HRVOC emissions established in 30 TAC Chapter 115 will be effective in 2006, and the HRVOC annual emissions cap and trade program will be effective in 2007. Sources subject to these rules can comply early and generate DERCs from early reductions up until the implementation dates. Therefore, we believe that sources will have incentives to generate VOC DERCs in the future, which will tend to offset the use of past DERCs for NSR purposes.

Dallas/Fort Worth (DFW) 8-Hour Ozone Nonattainment Area

Past patterns of DERC generation, combined with rules coming into effect in the future, suggest that it is likely that new reductions will continue to occur, although not in every year. From 2000 through 2005, some amount of DERCs were generated in every year except 2005 (which of course is not over yet). A relatively small amount was generated in 2004, but nonetheless the fact that substantial amounts of reductions were generated in each of the years 2000 through 2003 is a positive sign as to the ability of stationary sources in the DFW area to generate reductions. There are approximately 9,000 tons of NO_X and 10 tons of VOC DERCs banked in DFW; no MDERCs have been generated in DFW. Analysis of the DFW 2002 emissions inventory shows that for VOC emissions, approximately 53 percent of the inventory (216 tpd) is attributable to area sources, 26 percent (104 tpd) is attributable to onroad mobile sources, 13 percent (55 tpd) is attributable to nonroad mobile sources, and 8 percent of the inventory (30 tpd) is attributable to point sources. For NO_X emissions, approximately 45 percent of the inventory (207 tpd) is attributable to onroad mobile sources, 27 percent (121 tpd) is attributable to nonroad mobile sources, 19 percent of the inventory (83 tpd) is attributable to point sources, and 9 percent (40 tpd) is attributable to area sources. (Please note that the emissions inventory data above is presented only for illustrative purposes. EPA is not proposing action on the 2002 emissions inventory in this document.) Typical point sources in the DFW area are electric generating facilities and cement kilns. Electric generating facilities have generated approximately 85 percent of the NO_X DERCs in DFW to date.

To the extent there is a concern that these previous reductions were driven by early compliance with rules that are now in effect, and therefore that there is no incentive for future reductions, other rules coming into effect in the future should mitigate that concern. The DFW 5 percent increment of progress plan submitted to fulfill obligations under the 1-hour ozone standard extends the nonattainment area to the new counties of Ellis, Parker, Rockwall, Johnson, and Kaufman. Sources in the newly designated nonattainment counties now have a RACT compliance date of 2007. These sources could comply early with RACT requirements and generate DERCs up to the 2007 compliance date. The 8-hour ozone attainment deadline for DFW is 2010. The 8-hour ozone

attainment demonstration SIP has not yet been submitted, but it will presumably have control measures taking effect between now and 2010, which will drive reductions, and therefore potential early reductions, during that time.

In addition to the above reasons, to the extent discrete credits become widely used in the DFW area (as NSR offsets or otherwise), the ordinary function of the trading market could drive the creation of new DERCs and MDERCs. That is, demand for discrete reductions will provide a financial incentive for sources to generate such reductions.

Beaumont/Port Arthur (BPA) 8-Hour Ozone Nonattainment Area

Past patterns of DERC generation in the BPA area, combined with rules coming into effect in the future, suggest that it is likely that new reductions will continue to occur, although not in every year. From 1999 through 2005, some amount of DERCs were generated in every year except 2000 and 2005 (which of course is not over yet). The fact that substantial amounts of reductions were generated in most of these years is a positive sign as to the ability of stationary sources in the BPA area to generate reductions usable as DERCs. There are approximately 1,500 tons of NO_X DERCs banked in BPA; no MDERCs have been generated in BPA. Analysis of the BPA 2002 emissions inventory shows that for VOC emissions, approximately 44 percent of the inventory (57 tpd) is attributable to area sources, 34 percent (44 tpd) is attributable to point sources, 12 percent (16 tpd) is attributable to nonroad mobile sources, and 10 percent of the inventory (13 tpd) is attributable to onroad sources. For NO_X emissions, approximately 41 percent of the inventory (120 tpd) is attributable to nonroad mobile sources, 38 percent (109 tpd) is attributable to point sources, 16 percent of the inventory (46 tpd) is attributable to onroad mobile sources, and 5 percent (16 tpd) is attributable to area sources. (Please note that the emissions inventory data above is presented only for illustrative purposes. EPA is not proposing action on the 2002 emissions inventory in this document.) Typical point sources in the BPA area are refineries, chemical facilities, and electric generating facilities. Chemical manufacturers and refineries have generated all the DERCs in BPA to date.

To the extent there is a concern that these previous reductions were driven by early compliance with rules that are now in effect, and therefore that there is no incentive for future reductions, other rules coming into effect in the future should mitigate that concern. In particular, TCEQ has proposed to lower the RACT exemption for shipbuilding/repair and batch processes from 100 to 50 tons, which will cause some sources to be newly subject to RACT. These sources could comply early with RACT requirements and generate DERCs up to the 2006 compliance date.

Beaumont expects to reach attainment by the end of 2006, therefore, the time frame for using DERCs/MDERCs as NSR offsets in this area (and hence the scope of our concern about this usage) may prove to be fairly limited. If discrete credits do become widely used in the BPA area (as NSR offsets or otherwise), the ordinary function of the trading market could drive the creation of new DERCs and MDERCs. That is, demand for discrete reductions will provide a financial incentive for sources to generate such reductions.

El Paso CO and PM_{10} Nonattainment Area

El Paso is currently classified as a moderate nonattainment area for carbon monoxide (CO) and particulate matter with a diameter of less than 10 micrometers and smaller (PM_{10}). El Paso has monitored attainment of the CO standard for approximately the past five years and is expected to submit a request for redesignation by the end of 2005. EPA approved El Paso's 179(b) plan for PM_{10} on January 18, 1994 (59 FR 2532), which demonstrated that the area would achieve the PM_{10} standard except for emissions contribution from geologic dust from Mexico. TCEQ also intends to pursue redesignation under the PM_{10} standard in the future. Since the DERC program began in 1997, no CO or PM_{10} DECs have been generated.

With the future redesignation requests the timeframe for using DERCs/MDERCs as NSR offsets in the El Paso area (and hence the scope of our concern about this usage) may prove to be fairly limited. If discrete credits do become widely used in the El Paso area (as NSR offsets or otherwise), the ordinary function of the trading market could drive the creation of new DERCs and MDERCs. That is, demand for discrete reductions will provide a financial incentive for sources to generate such reductions. Also, because there are no DERCs or MDERCs generated in El Paso, the concern that older banked reductions could reenter the market is not applicable.

B. Geographic Restrictions

The geographic restrictions outlined in section 101.372(f) provide further safeguards against inappropriate use of DECs as offsets, by ensuring that reductions used for offsets come from the same source or from other sources in the same nonattainment area. On completion of the conditions outlined earlier in this document, TCEQ Executive Director and EPA approval will be required for sources wishing to use reductions generated in another state or nation, from another nonattainment area, or from attainment counties into nonattainment areas. The DERC program relies on many sources continuing to generate new DERCs and MDERCs to balance with other sources using previously generated discrete credits. Proper functionality of the DERC program will ensure that reductions used as offsets will not negatively impact an area's attainment strategy.

C. DECs Are Equivalent to Real Reductions in Allowables

EPA believes that although generating a DEC does not change the allowable emissions in a facility's permit, it is nonetheless appropriate to treat the temporary reduction in facility emissions that a DEC represents as a limited reduction in the allowable emissions of the generating facility. The rationale for this conclusion is that a DEC is banked after it is generated, but the facility must be able to quantify its reductions and demonstrate that emissions before and after a reduction strategy produced a certain amount of reductions. Thus, by nature of how the DEC is generated, there is in effect a temporary limit on the facility's emissions.

D. Program Audit

EPA's EIP Guidance directs that to avoid problems associated with inter-temporal trading, the program should analyze, minimize, track, and if necessary correct potential problems. The DERC program, at section 101.379, requires an audit of the program every three years. The TCEQ Executive Director may suspend or discontinue the use of DECs if a problem relating to DEC use is identified during the triennial audit.

For the above reasons, EPA believes that the DERC program provides offsets that (except for their discrete nature) are in principle equivalent to offsets provided by traditional means, and that the program is consistent with section 173. With the restrictions outlined above, and the environmental benefit provision for DEC use, EPA believes that TCEQ has addressed our expectations for using DECs as NSR offsets.

8. What is EPA's analysis of the commitments TCEQ has made?

A. International Discrete Emission Reductions and Other Discrete Reductions From Outside the Area of Use

The DERC rule provides at section 101.372(f) that emission reductions from another county, state, or nation may be used, subject to certain conditions. The current wording of the rule is unclear on when prior approval from EPA will be required. Upon completion of the condition outlined above, prior approval from EPA will be required when discrete emission credits or reductions from another county, state, or nation are requested for use. EPA has addressed the possibility of such cross-jurisdictional trades in Appendix 16.16 of the EIP Guidance. Satisfaction of the provisions of Appendix 16.16 is necessary to ensure that cross-jurisdictional trades are consistent with the fundamental integrity, equity, and environmental benefit principles described in the EIP Guidance. This condition requiring EPA review of such trades will be the mechanism by which EPA ensures that inappropriate trades do not take place. In particular, EPA intends to require a further SIP revision (either a detailed trading program, such as an interstate MOU, or a trade-specific submission) before approving any international trades, interstate trades, or intrastate trades that involve reductions from beyond the nonattainment area.

International trades present an especially difficult case. For instance, currently there is no approvable mechanism for demonstrating that reductions made in another country are surplus or enforceable. Nonetheless, emission reductions in other countries could potentially offer substantial air quality benefits in the United States. In approving the DERC rule, EPA is recognizing the concept of international trading and describing a framework (*i.e.*, the submission of a SIP revision demonstrating among other things the validity and enforceability of foreign reductions) for such trading, in the event that a suitable mechanism is developed for resolving concerns regarding enforceability and surplus. Until such a time, however, EPA does not expect to be able to approve specific international trades under the DERC rule.

B. Generation and use of DERCs from permanent shutdowns

The EIP Guidance states that the generation of discrete emission reduction credits from shutdowns and activity curtailments is not an appropriate feature of OMT programs because:

- OMT EIPs are intended to encourage innovative and creative emission reductions, and shutdowns generally do not fall into this category.
- Other types of trading programs may allow shutdowns to generate emission reductions.

Shutdowns are also problematic for OMT programs because of the possibility that a facility may shut down in one area, generate and sell credits, but then relocate operations to other areas or states. Additionally, when activity level increases cause emission increases, mitigating reductions are typically not required. Thus, allowing the generation of tradable credits as a result of activity level decreases (including shutdowns) may tend to promote emissions increases. Such patterns of activity related to shutdowns have the potential to interfere with attainment.

Section 1.6 of the EIP Guidance states that:

> From now on, EPA will only approve EIPs that are in substantial agreement with this guidance. We recognize you may have spent considerable effort to develop your EIP. However, since this EIP guidance was not complete at the time, you may not have included all the requirements contained in this guidance. If you have submitted an EIP to EPA, but it has not been approved yet, you must:
>
> - Consult with your Regional office to determine if any changes are needed for approval
> - Revise your EIP SIP to make the required changes before resubmitting it to EPA.

Consistent with the intent of this statement, EPA recognizes that TCEQ began developing the DERC program before the January 2001 publication of the EIP Guidance. More specifically, the Texas DERC program has been operational since 1997. Accordingly, we have considered the policies behind the EIP Guidance's statement that OMT credits from shutdowns are not appropriate. We have also considered the EPA Office of Inspector General report titled, ''Open Market Trading Program for Air Emissions Needs Strengthening'' (No. 2002–P–00019, September 30, 2002), as well as EPA air program responses to that report.

After considering the legal and policy issues, we have concluded that it is appropriate to conditionally approve the DERC rule based on the following commitments from TCEQ:

- Revising the language in section 101.373 to prohibit the future generation of DERCs from permanent shutdowns (''shutdown DERCs'') and to allow shutdown DERCs generated before September 30, 2002, to remain available for use for up to five years from the date of the commitment letter; and
- To perform a credit audit to remove from the emissions bank all shutdown DERCs generated after September 30, 2002.

EPA believes that these conditions address the majority of our policy concerns relating to the use of shutdown DERCs in OMT programs. These conditions address the issue of incentives because sources can no longer generate DERCs from shutdowns. We also believe that the issue of whether the use of the existing shutdown DERCs would interfere with attainment in the HGB nonattainment area has been addressed because TCEQ modeled a conservative estimate of the use of DERCs, including shutdown DERCs, and found no interference with attainment. (See Section IV of the TSD—Technical Summary, Does the DERC EIP SIP Submittal Violate the Integrity of Other Programs.) Additionally, reductions from shutdowns of facilities not included in the SIP cannot generate DERCs. Future attainment demonstrations for other areas will have to consider and account for any potential impact from use of DERCs as well.

EPA further believes that September 30, 2002, is an acceptable cut-off date for the use of shutdown DERCs because it reflects the publication date of the OIG report and the various EPA air program responses, which served as notice that in EPA's view shutdowns should not generate OMT credits. Additionally, it reflects the necessary response time for TCEQ to adopt and submit SIP revisions, and for EPA to process these submittals.

The five year phase-out period for the use of shutdown DERCs generated and banked before September 30, 2002, is also consistent with EPA's goals regarding the effects of credit expiration on the market. As explained in the EIP Guidance, EPA supports unlimited credit lifetimes in trading programs because it tends to reduce emissions spiking around the time of credit expiration, and because credits with an unlimited lifetime promote an efficient trading market. Here, EPA believes that the five year phase-out (as opposed to a shorter-term phase-out) will reduce the potential for emissions spiking and will help promote an efficient trading market, because companies can manage DERC usage across an extended time period. Additionally, in the HGB area, the flow controls established by TCEQ will help ensure that emissions spiking does not occur. (See the following section for a discussion of other issues

related to credits with an unlimited lifetime.)

C. Unlimited Lifetime for DECs

A DEC is available for use after the Notice of Generation and Generator Certification of Discrete Emission Credits Form, has been received, deemed creditable by the TCEQ Executive Director, and deposited in the commission credit registry in accordance with section 101.378(a), and may be used anytime thereafter. DECs do not expire; all credits are deposited in the credit registry and reported as available credits until they are used or withdrawn.

Section 16.15 of the EIP Guidance recognizes that allowing an unlimited lifetime for OMT credits provides certainty and flexibility to the sources participating in the program and reduces the risk of emission spiking that could occur before the expiration date of the credit. It also recognizes that an unlimited lifetime of OMT credits could present an enforcement problem because of the Federal statute of limitations at 28 U.S.C. Section 2462, which typically requires Federal enforcement actions under environmental statutes to commence within 5 years of a violation. (This concern does not apply in the same way to State programs because there is no comparable statute of limitations under Texas law.) In addition, enforcement actions taking place many years after the generation or use of DECs could be hindered by evidentiary problems such as the lack of available records. Therefore, because of the unlimited lifetime of DECs under the Texas program, EPA has placed a condition on approval of the rule. To address the Federal enforceability concerns, TCEQ has committed to:

- Revise Form DEC–1, Notice of Generation and Generator Certification of Discrete Emission Credits; Form MDEC–1, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits; and Form DEC–2, Notice of Intent to Use Discrete Emission Credits, to include a waiver to the Federal statute of limitations defense for generators and users of DECs. The assertion of any such defense will render the initial trade void from the very beginning, and the subsequent use of such emission reductions will be a violation.

- TCEQ will maintain its current policy of preserving all records relating to DEC generation and use for a minimum of 5 years after the use strategy has ended.

Again, TCEQ has agreed to comply with these conditions during the conditional approval period.

9. What is EPA's analysis of the rule language in Chapters 115 and 116?

The rule language published at 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter J, Division 4, section 115.950, submitted by TCEQ on December 20, 2000, is approvable. This subsection cross-references the use strategies for DERCs and MDERCs in section 101.376, which we are proposing to approve. These use strategies provide that DERCs and MDERCs can be used to meet VOC requirements in Chapter 115.

The definition of ''facility'' published at 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction, Subchapter A, section 116.10(4), submitted by TCEQ on July 22, 1998, is approvable. This definition is approvable as defining what is a ''facility'' for purposes of permitting under Chapter 116. This satisfies the provisions of 40 CFR § 51.160(e) by identifying the types of facilities, building, structures, or installations which will be subject to review.

10. What is EPA's analysis of the DERC program with respect to section 110(l) of the Clean Air Act?

Section 110(l) of the Clean Air Act states:

> Each revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.

Thus, under section 110(l), this SIP revision must not interfere with attainment or reasonable further progress or any other applicable requirement of the Act.

As a general matter, the satisfaction of the environmental benefit principle and the other integrity principles applicable to trading programs will tend to demonstrate that a trading program will do no worse than maintain existing air quality. Accordingly, EPA has determined that discretionary EIPs that are consistent with the EIP Guidance are consistent with section 110(l):

> Congress did not address specific requirements for EIPs in the CAA. Consistent with our mandate, the EPA has interpreted what an EIP should contain in order to meet the requirements of the CAA. This document is a guidance document that sets forth EPA's non-binding policy for EIPs. This document does not represent final EPA action on the requirements for EIPs. Rather, this document identifies several different types of economic incentive programs, and proposes elements for each type that, if met, EPA currently believes would assure that the program would meet the applicable CAA provisions. The guidance phrases these elements in the imperative—that is, using the terms ''must'' or ''shall''. This is done only to signify that EPA would propose to approve a SIP submittal of a program containing the indicated elements on grounds that under section 110(l) of the CAA, the SIP revision does not interfere with any applicable requirement concerning attainment, reasonable further progress, or any other applicable requirement.

(EIP Guidance, section 1.9.) Thus, if the DERC program is consistent with the EIP Guidance it will satisfy section 110(l). Although the DERC program is an OMT program as described in the EIP Guidance, it deviates in several respects from that guidance. Namely, the DERC program allows the use of DECs in the HGB MECT, the generation and use of DERCs from permanent shutdowns, the use of discrete reductions from beyond the nonattainment area, and the use of DECs as NSR offsets. Therefore, we must determine if these areas of difference from the guidance could reasonably be expected to interfere with attainment, reasonable further progress, or any other applicable CAA requirement. As a preliminary matter we note that a user of DECs must retire 10 percent more credits than are needed, which provides a built-in source of reductions and therefore tends to promote attainment. That meliorative tendency noted, we will address in the section 110(l) context each of the areas of significant departure from the EIP guidance.

First, as described earlier in this action, the use of DERCs in lieu of MECT allowances has been modeled for impact on the HGB attainment demonstration and reasonable further progress plan. See RME docket R06–OAR–2005-TX–0018 for the attainment demonstration. EPA believes that with the flow control restrictions on the use of DERCs in the MECT, and considering the modeling presented in the attainment demonstration, this deviation does not render the rule inconsistent with section 110(l).

Second, the generation and use of DERCs from permanent shutdowns is also a deviation from the EIP Guidance. (See section I.C.8 of this action.) One condition we have placed on our approval of the DERC program is that TCEQ prohibit future generation of DERCs from permanent shutdowns. Additionally, the DERCs currently banked from permanent shutdowns will

only be available for use for a limited time. Because banked DERCs are modeled as actual emissions that could reenter the airshed, all nonattainment areas must evaluate use of shutdown DERCs in the modeling. The attainment demonstration for HGB is being proposed concurrently with this action. TCEQ will need to evaluate impact of DERC use in BPA and DFW as attainment demonstrations are submitted. Only a minimal number of shutdown DERCs have been banked in attainment areas. With the five-year phase out period allowed under the conditional approval and the limitations on DERC use at section 101.376, the use of these DERCs should be sufficiently restricted as to satisfy section 110(l).

Third, the use of discrete reductions from beyond the nonattainment area is also a condition for rule approval. EPA approval is required anytime a source requests to use discrete reductions from beyond the nonattainment area, or from another state or nation. EPA intends to address any such requests through a SIP revision, which will demonstrate consistency with section 110(l).

Fourth, the use of DERCs and MDERCs as NSR offsets is permitted by the EIP Guidance, but only to the extent that other sections of the CAA are satisfied. Our discussion earlier shows that the use of DECs is consistent with sections 171 and 173. Therefore, this use is also consistent with section 110(l). Further, any such use of DECs would be in connection with an NSR permit, which itself includes a review to ensure noninterference with attainment.

Having reviewed the DERC rule in connection with the EIP Guidance and section 110(l) of the act, we conclude that for purposes of determining consistency with section 110(l) the rule is consistent with the guidance. To further support this determination, we will discuss the rule in connection with specific locations and criteria pollutants. Discrete emission credits can be generated from reductions of any criteria pollutant or precursor of a criteria pollutant, with the exception of lead. Therefore, we have evaluated the DERC rule for its impact on attainment and reasonable further progress for CO, ozone, NO_2, NO_X, PM, SO_2, and VOC.

As to ozone, attainment demonstrations under the 8-hour standard currently in effect are not yet due. Pending that date, EPA believes that preservation of the status quo air quality while new plans are being developed will prevent interference with the States' obligations to develop timely attainment demonstrations and reasonable further progress plans and to attain as expeditiously as practicable. Accordingly, for 8-hour ozone nonattainment areas in Texas, EPA believes that a demonstration that this rule will not worsen existing air quality is sufficient. As to the HGB nonattainment area, a fuller discussion of this analysis appears in EPA's evaluation of the HGB attainment demonstration submitted for the 1-hour ozone standard (RME Docket R06–OAR–2005–TX–0018). That rulemaking contains EPA's proposed determination that the area will attain the 1-hour ozone standard and that the current attainment strategy does not interfere with attainment of the 8-hour standard in the HGB area. In addition, EPA has already approved TCEQ's 1-hour reasonable further progress plan for HGB (70 FR 07407, February 14, 2005).

Under the DERC rule, one ozone precursor may be used to meet the reductions of another precursor (*i.e.*, a facility could use NO_X reductions to satisfy a VOC requirement or vice versa), subject to an urban airshed modeling demonstration and TCEQ Executive Director and EPA approval. In very limited cases, the rule allows for such interpollutant trading across the U.S.-Mexico border without specifically requiring urban airshed modeling, but any such trades would be subject to EPA approval, as further described below. DEC usage is also subject to geographic restrictions. Generally, DECs generated in an attainment area can be used in that area or any other attainment area. DECs generated in a nonattainment area can only be used in that nonattainment area or in any attainment area. TCEQ Executive Director and EPA approval will be required any time a DEC generated outside a nonattainment area is requested for use within that nonattainment area. EPA intends to address any such request through a SIP revision, which would require a demonstration of consistency with section 110(l). TCEQ will also conduct an audit of the DERC program every three years. The audit will specifically evaluate the impact of DEC generation and use on the State's attainment demonstration. If problems are identified, the TCEQ Executive Director may suspend or discontinue the trading of DECs as a remedy.

As to criteria pollutants other than ozone, the only nonattainment area in Texas is El Paso, which is currently designated nonattainment for carbon monoxide (CO) and particulate matter with a diameter of 10 micrometers and smaller (PM_{10}). El Paso has monitored attainment of the CO standard for approximately the past five years and is expected to submit a request for redesignation by the end of 2005.

No DECs of any sort have yet been banked in El Paso. Therefore, before any DECs could be used there, reductions in an amount ten percent greater than the eventual use would have to occur. In light of El Paso's five-year record of monitored attainment with the CO standard, we conclude that such potential DEC usage would not interfere with attainment or reasonable further progress. As to PM_{10}, potential DEC usage will not interfere with attainment of the PM_{10} standard. EPA approved a SIP revision for El Paso on January 18, 1994, finding under section 179(b) of the CAA that the plan provided for attainment but for emissions from Mexico consisting primarily of geologic dust (59 FR 2532). As demonstrated by the 179(b) plan and by the fact that no one has banked PM_{10} emissions, there are very few sources in the El Paso area that could serve as generators of PM_{10} DECs, and therefore there is no reasonable prospect that the use of PM_{10} DECs will interfere with attainment of that standard.

We have also considered whether the potential use of DECs to exceed allowable emission levels under 30 TAC § 101.376(b)(1) is contrary to section 110(l) in that it could allow sources to exceed limits in their CAA Title V permits, which are ''applicable requirements'' under the Act. We conclude that this aspect of the rule does not violate section 110(l), for the following reasons. First, EPA has addressed the interface of Title V permits and trading programs in the EIP guidance, which provides:

> If a facility that has a title V operating permit wishes to participate in your approved EIP, you must modify the facility's operating permit to include the detailed compliance provisions necessary to assure compliance with the EIP. Thus, the permit becomes a valuable tool to ensure the source meets the requirements of the EIP.
>
> Once the permit includes terms and conditions necessary to implement the EIP (as described below), the source may typically make individual trades under the EIP without the need for future formal permit revisions. This is true because most trading activity under such a permit would already be addressed and allowed by the specific terms and conditions of the permit and such trading would not normally conflict with the permit. This is the principle expressed by section 70.6(a)(8) of the CFR, which states that permit revisions are not required for trading program changes that are ''provided for'' in the permit.

(EIP Guidance, Appendix 16.8.) Texas has modified its Title V permit template so as to address the permissible use of DECs to meet Title V permit requirements. As further explained in the TSD for this action, we find that the

Texas permit language satisfies the concerns identified in Appendix 16.8.

In reaching this conclusion, we also considered that a Title V permit is not itself a source of substantive limits. Rather, it incorporates applicable requirements under other permits and programs. In Texas, as elsewhere, many of the allowable emission levels in Title V permits are determined through New Source Performance Standards (NSPS), Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER), or National Emission Standards for Hazardous Air Pollutants (NESHAPs). Under the Texas rules, DECs may not be used for compliance with any of these programs. The rule does allow DECs to be used for compliance with Reasonably Available Control Technology (RACT) standards, in accordance with EPA's guidance. Specifically, the guidance provides that ''[i]f your EIP allows sources to avoid direct application of RACT technology, your EIP must ensure that the level of emission reductions resulting from implementation of the EIP will be equal to those reductions expected from the direct application of RACT'' (EIP Guidance, Appendix 16.7). The Texas program ensures consistency with that element of the EIP Guidance through the requirement that a user of DECs must retire 10 percent more credits than are needed. Accordingly, any use of DECs for RACT compliance will have been preceded by a ten percent greater reduction.

The above discussion concerns criteria pollutants for which an area is classified as nonattainment. As for pollutants for which an area is in attainment, EPA believes that the DERC rule is consistent with section 110(l). Discrete credit use in attainment areas could potentially result in temporary local increases in such attainment pollutants, but only in the sense of authorizing limited exceedances of state-only permit requirements. That is, in attainment areas in Texas, the Federally enforceable permit limits are all based on programs, such as BACT and NSPS, for which DEC use is not authorized under the Texas rule. DEC use for attainment pollutants can therefore only affect non-SIP requirements. Irrespective of the DERC rule, such non-SIP requirements are subject to change without undergoing a 110(l) analysis. Accordingly, the DERC SIP revision is not itself causing any increases in attainment pollutants that might be contrary to section 110(l).

For the above reasons, and based also on the analysis in the HGB rulemaking, we conclude that the Texas DERC rule represents an environmental improvement on the status quo, and does not interfere with attainment, reasonable further progress, or any other requirement of the Act. TCEQ will need to evaluate DEC generation and use for the BPA and DFW nonattainment areas in the appropriate attainment demonstrations and reasonable further progress plans.

D. Conclusion

EPA reviewed the DERC program revisions with respect to the expectations of the EIP Guidance document and the requirements of the Clean Air Act. EPA has concluded after review and analysis that the DERC program is conditionally approvable. EPA is proposing to approve the revisions to sections 101.371, 101.372, 101.378, and 101.379 submitted by TCEQ on January 31, 2003, for rule log number 2002–044–101–AI; and the revisions to sections 101.370, 101.373, 101.374, and 101.376 submitted by TCEQ on December 6, 2004, for rule log number 2003–064–101–AI.

EPA has also reviewed the subsection in 30 TAC Chapter 115 which provide cross-references to the DERC program, and has concluded that this subsection is approvable. We are proposing to approve section 115.950 submitted by TCEQ on December 20, 2000, for rule log number 1998–089–101–AI. Because this subsection involves the use of discrete emission credits and emission credits for compliance, the use of emission credits for compliance with Chapter 115 is not approved until the Emission Credit Banking and Trading program has been approved. The rules for emission credit generation and use are being considered in a separate **Federal Register** notice.

EPA has also reviewed the definition of facility provided in 30 TAC Chapter 116, and has concluded that this subsection is approvable. We are proposing to approve section 116.10(4) submitted by TCEQ on July 22, 1998, for rule log number 98001–116–AI.

II. General Information

A. Tips for Preparing Your Comments

When submitting comments, remember to:

1. Identify the rulemaking by File ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

B. Submitting Confidential Business Information (CBI)

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official file. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

III. 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 (Public Law 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.*).

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: September 27, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–19998 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–IN–0006; FRL–7981–7]

Determination of Attainment, Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Evansville Area to Attainment of the 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published September 9, 2005 (70 FR 53605). On September 9, 2005, EPA proposed to approve the State of Indiana's request to redesignate the Evansville area (Vanderburgh and Warrick Counties) to attainment of the 8-hour ozone National Ambient Air Quality Standard. In conjunction with the proposed approval of the redesignation request for the Evansville area, EPA proposed to approve the State's ozone maintenance plan for the 8-hour ozone NAAQS through 2015 in this area as a revision to the Indiana State Implementation Plan. EPA also proposed to approve 2015 Volatile Organic Compounds and Oxides of Nitrogen Motor Vehicle Emissions Budgets, which are supported by and consistent with the 10-year maintenance plan for this area, for purposes of transportation conformity. In response to a September 9, 2005, request from Valley Watch, Inc., EPA is extending the comment period for 7 days.

DATES: The comment period is extended to October 18, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IN–0006, to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. E-mail: *mooney.john@epa.gov.* Additional instructions to comment can be found in the notice of proposed rulemaking published September 9, 2005 (70 FR 53605).

FOR FURTHER INFORMATION CONTACT: Edward Doty, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057, *Doty.Edward@epa.gov.*

Dated: September 29, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–20094 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1094–AA49

Implementation of the Equal Access to Justice Act in Agency Proceedings

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) is proposing to amend its existing regulations that implement the Equal Access to Justice Act to bring them up to date with amendments to the statute that have been enacted since OHA adopted the existing regulations in 1983.

DATES: You should submit your comments by December 5, 2005.

ADDRESSES: You may submit comments, identified by the number 1094–AA49, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

—E-mail: *John_Strylowski@ios.doi.gov*. Include ''RIN 1094–AA49'' in the subject line of the message.

—Fax: 703–235–9014.

—Mail: Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203.

—Hand delivery: Director, Office of Hearings and Appeals, Department of the Interior, 801 N. Quincy Street, Suite 400, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203, Phone 703–235–3750. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comments

If you wish to comment on this proposed rule, you may submit your comments by any of the methods listed in the **ADDRESSES** section.

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. We will honor the request to the extent allowable by law.

In some circumstances we may withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. 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 or organizations or businesses, available for public inspection in their entirety.

II. Background

Originally enacted in 1980, the Equal Access to Justice Act (the Act or EAJA) provides that ''[a]n agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.'' 5 U.S.C. 504(a)(1) (2000). The Act has been amended several times since 1980, most recently in 1996, when the maximum amount of fees that may normally be awarded to an attorney or agent was increased from $75 per hour to $125 per hour. 5 U.S.C. 504(b)(1)(A)(ii).

OHA issued final regulations implementing the Act in 1983. 43 CFR 4.601–4.629, 48 FR 17595 (April 25, 1983). Those regulations were based on model rules published in 1981 by the Administrative Conference of the United States (ACUS). 46 FR 32900 (June 25, 1981). ACUS published revised model rules in 1986 that reflected the amendments Congress made when it re-authorized the Act in 1985. 1 CFR part 315 (1995), 51 FR 16659 (May 6, 1986); *see* Administrative Conference of the U.S., *Federal Administrative Procedure Sourcebook* at 419 (2d ed. 1992). ACUS did not publish model rules reflecting amendments to the Act made since 1985 before ACUS was terminated in 1996.

In preparing these revised regulations implementing the Act, OHA has used the 1986 ACUS model rules as a point of departure, modifying them to put them in plain language, to reflect more recent amendments to the Act, and to make certain changes we believe are warranted for reasons explained in the following section-by-section analysis. We do not discuss changes that are simply editorial. Readers may find it helpful to have a copy of the 1986 model rules available as they review this proposed rule.

III. Section-by-Section Analysis

Section 4.601 What is the purpose of this subpart?

This regulation is based on the ''purpose'' section of the 1986 model rules, 1 CFR 315.101. We propose using the phrase ''the Department or other agency'' rather than ''this agency'' because OHA conducts proceedings for some agencies outside the Department, *e.g.*, the Indian Health Service. *See* the proposed definition of ''other agency'' in section 4.602.

The regulations in this subpart apply only to administrative proceedings under 5 U.S.C. 504, not to judicial proceedings under EAJA, 28 U.S.C. 2412 (2000), or to the attorney fee provisions of any other statute.

Section 4.602 What definitions apply to this subpart?

We propose revising most of the definitions in our previous regulations and have added some definitions.

We propose adding ''deciding'' before ''official(s) who presided'' in the definition of ''adjudicative officer'' because it is in the Act, 5 U.S.C. 504(b)(1)(D). ACUS suggested that the adjudicative officer should normally be the person who made the decision on the merits, but stated its belief that ''agencies can properly assign EAJA petitions to new board members or panels where illness, retirement, or other specific circumstances would prevent assignment to the original member.'' 51 FR 16663–64 (May 6, 1986).*See United States* v. *Willsie*, 155 IBLA 296, 297–98 (2001). We are proposing language to cover such circumstances.

Within OHA, the adjudicative officer will often be an administrative law judge, but in some cases, it may be a panel of two or more appeals board judges. The term ''adjudicative officer'' is therefore used to include both a single deciding official and a panel of deciding officials issuing a joint decision.

Paragraphs (1) and (2) of the proposed definition of ''Adversary adjudication'' are based on the second sentence of the ''proceedings covered'' section of the model rules, 1 CFR 315.103(a). Paragraphs (3) and (4) are based on 1986 and 1993 amendments to the Act, Pub. L. 99–509 and Pub. L. 103–141.

The proposed definition of ''affiliate'' is based on the second sentence of paragraph (f) of the ''eligibility'' section of the model rules, 1 CFR 315.104(f).

The proposed definition of ''demand'' is based on a 1996 amendment to the Act, Pub. L. 104–121;*see* 5 U.S.C. 504(b)(1)(F).

The proposed definition of ''final disposition'' is based on paragraph (b) of the ''when an application may be filed'' section of the model rules, 1 CFR 315.204. Under the definition, a settlement or voluntary dismissal of the proceeding may serve as the final disposition, in which case any application for fees and expenses would be due within 30 days from that event, under section 4.613(a). But a settlement or voluntary dismissal may not be a sufficient basis for an award.

For example, if the settlement or voluntary dismissal occurs at the hearings level because the Department or other agency has voluntarily changed its position in response to the filing of the proceeding and before there has been any ruling on the merits, the applicant will be unable to show it is a prevailing party entitled to fees. *Buckhannon Board & Care Home, Inc.* v. *West Virginia Dept. of Health and Human Resources*, 532 U.S. 598 (2001); *Brickwood Contractors, Inc.* v. *United States*, 288 F.3d 1371 (Fed. Cir. 2002);*Perez-Arellano* v. *Smith*, 279 F.3d 791 (9th Cir. 2002). On the other hand, if the settlement or voluntary dismissal occurs at the appeals board level because the Department or other agency has changed its position in response to an adverse ruling on the merits at the hearings level, the applicant will likely be able to show that it is a prevailing party potentially entitled to fees.

We propose adding a definition of ''other agency,'' as discussed above in connection with section 4.601.

The proposed definition of ''party'' is drawn from 1 CFR 315.104(a) of the model rules and a 1996 amendment of the Act, Pub. L. 104–121.

The proposed definition of ''position of the Department or other agency'' is based on the Act, 5 U.S.C. 504(b)(1)(E), but the exception provided in the Act has been transferred to section 4.605(b), as suggested in the ''standards for awards'' section of the model rules, 1 CFR 315.105(b).

Section 4.603 What proceedings are covered by this subpart?

Paragraphs (a), (b)(1), and (b)(2) are based on the ''proceedings covered'' section of the model rules, 1 CFR 315.103(a), except that the second sentence of section 315.103(a) has been moved to the definition of ''adversary adjudication'' in section 4.602, as stated above. Under that definition, an ''adjudication under 5 U.S.C. 554'' includes those proceedings required by a statute to be conducted under section 554, *e.g.*, section 9 of the Taylor Grazing Act, 43 U.S.C. 315h (2000), *see Bureau of Land Management* v. *Ericsson*, 98 IBLA 258 (1987), and the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f(b)(3) (2000).

Paragraph (a) also covers appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978, 41 U.S.C. 605, before the Interior Board of Contract Appeals under section 8 of that Act, 41 U.S.C. 607.

Paragraph (b)(1) would clarify that the Act does not cover other hearings or appeals that are not governed by 5 U.S.C. 554, even if the Department has elected to conduct such hearings or appeals using procedures comparable to those under section 554. Examples include cases referred by an appeals board for a fact-finding hearing under 43 CFR 4.337(a) or 4.415, and personnel grievance hearings for Departmental employees under 370 Departmental Manual 771, Subchapter 3.

In *Collord* v. *U.S. Department of the Interior*, 154 F.3rd 933 (9th Cir. 1998), the U.S. Court of Appeals for the Ninth Circuit held that, because a mining claim is a property interest that may not be extinguished without due process, section 554 governs mining claim contests, and therefore those proceedings are adversary adjudications under the Act. The Interior Board of Land Appeals (IBLA) has followed the *Collord* decision with respect to mining claim contests, *United States* v. *Willsie*, 155 IBLA 296, 297 (2001), and has extended its applicability to Alaska Native Allotment Act claim contests, *Heirs of David F. Berry*, 156 IBLA 341, 343–44 (2002).

However, the Ninth Circuit's reliance in *Collord* on *Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 50–51 (1950), is open to question.*See A Guide to Federal Agency Adjudication* ¶¶ 3.02, 11.03 (Michael Asimow, ed., American Bar Association, 2003); 1 Richard J. Pierce, Jr., *Administrative Law Treatise*, § 8.2 (4th ed. 2002).

Under existing court precedent, therefore, mining claim contests and Native allotment contests in the Ninth Circuit are deemed to fall within the proceedings covered by section 4.603(a), while mining claim contests in other judicial circuits may not be. *See Kaycee Bentonite Corp.*, 79 IBLA 182 (1984) (pre-*Collord* analysis of the applicability of the Act to mining claim contest proceedings).

Paragraph (c) is based on 1 CFR 315.103(c) of the model rules.

Section 4.604 When am I eligible for an award?

We propose to omit section 4.604 of our previous regulations, or any revision of that section based on the ''when the Act applies'' section of the model rules, 1 CFR 315.102, because it is no longer needed. Section 4.605 of our previous regulations would become section 4.604.

Paragraph (a) is based on the ''eligibility of applicants'' section of the model rules, 1 CFR 315.104(a), except that we have moved the definition of ''party'' to section 4.602, as stated above.

Paragraph (b) is based on 1 CFR 315.104(b). We propose adding paragraph (6) based on a 1996 amendment to 5 U.S.C. 504(b)(1)(B), Pub. L. 104–121.

Paragraphs (c) through (g) are based on 1 CFR 315.104(c) through (g), except that the second sentence of paragraph 315.104(f) was moved to section 4.602 as the definition of ''affiliate.''

Section 4.605 Under what circumstances may I receive an award?

Paragraph (a) is based on the ''standards for awards'' section of the model rules, 1 CFR 315.105(a), except that the second sentence of the model rule, which is based on 5 U.S.C. 504(b)(1)(E), has been moved to the definition of ''position of the Department or other agency'' in section 4.602, as stated above.

Consistent with the model rules, section 4.605(a) provides that an award may be granted to a party who has prevailed in ''the proceeding'' or in ''a significant and discrete substantive portion of a proceeding.'' The latter phrase could include, in an appropriate case, an interlocutory appeal on a significant, separable issue, or an appeal that results in a remand to an ALJ for further proceedings. It would not include a ruling on a purely procedural issue during the course of a proceeding. *See* 46 FR 32900, 32907–08 (June 25, 1981); *Van Hoomissen* v. *Xerox Corp.*, 503 F.2d 1131, 1133 (9th Cir. 1974); *Bohn* v. *Heckler*, 613 F. Supp. 232, 234–35 (N.D. Ill. 1965).

Paragraph (b) is based on 1 CFR 315.105(b) and 5 U.S.C. 504(b)(1)(E).

Paragraph (c) is based on 5 U.S.C. 504(a)(4), as added by a 1996 amendment, Pub. L. 104–121.

Section 4.606 What fees and expenses may be allowed?

Paragraph (a) is based on the ''allowable fees and expenses'' section of the model rules, 1 CFR 315.106(a)–(b), except that the maximum hourly fee has been increased from $75 per hour to $125 per hour, in accordance with a 1996 amendment, Pub. L. 104–121. Instead of supplying a fixed dollar amount for the rate of an expert witness, we propose substituting a standard of not more than the highest rate at which the Department or other agency pays expert witnesses with similar expertise.

Paragraphs (b) and (c) are based on the corresponding paragraphs of the model rule, 1 CFR 315.106(c) and (d).

We have omitted from section 4.606 any reference to fees for agents, who are included in the Act at section 504(a)(2), (b)(1)(A) and in section 315.105 of the model rules. As used in the Act, the term ''agent'' does not mean any person who acts on behalf of a party; rather, it means a specialized non-attorney practitioner who is authorized to represent clients with special permission of the tribunal. *Fanning, Phillips and Molnar* v. *West*, 160 F.3d 717 (Fed. Cir. 1998); *Cook* v. *Brown*, 68 F.3d 447 (Fed. Cir. 1995).

The Department does not authorize specialized non-attorney practitioners to represent clients before it, *see* 43 CFR 1.3 (2004). Under section 1.3(b)(3), an individual who is not an attorney can represent himself, a member of his family, a partnership of which he is a member, a corporation of which he is an officer or full-time employee, etc.; but that does not make the individual an ''agent'' within the meaning of the Act. Consequently, a party could not seek fees for an agent in a proceeding before OHA, and there is no need for these regulations to include a reference to agents.

Section 4.610 What information must my application for an award contain?

This section is based on the ''contents of application'' section of the model rules, 1 CFR 315.201. We propose adding paragraph (b)(4) to cross-reference the new language in section 4.605(c).

Section 4.611 What information must I include in my net worth exhibit?

This section is based on the ''net worth exhibit'' section of the model rules, 1 CFR 315.202, except we propose adding a reference to a small entity in the first sentence of paragraph (a). We have also broken the paragraphs of the model rule into shorter paragraphs and have added a cross reference in the last sentence to the Department's Freedom of Information Act regulations.

Section 4.612 What documentation of fees and expenses must I provide?

This section is based on the ''documentation of fees and expenses'' section of the model rules, 1 CFR 315.203.

Section 4.613 When may I file an application for an award?

This section is based on the ''when an application may be filed'' section of the model rules, 1 CFR 315.204, except that paragraph (b) of the model rules has been moved to the definitions in section 4.602.

Section 4.620 How must I file and serve documents?

This section is based on the ''filing and service of documents'' section of the model rules, 1 CFR 315.301.

Section 4.621 When may the Department or other agency file an answer?

This section is based on the ''answer to application'' section of the model rules, 1 CFR 315.302.

Section 4.622 When may I file a reply?

This section is based on the ''reply'' section of the model rules, 1 CFR 315.303.

Section 4.623 When may other parties file comments?

This section is based on the ''comments by other parties'' section of the model rules, 1 CFR 315.304.

Section 4.624 When may further proceedings be held?

This section is based on the ''further proceedings'' section of the model rules, 1 CFR 315.306.

Section 4.625 How will my application be decided?

This section is based on the ''decision'' section of the model rules, 1 CFR 315.307. We have omitted the final sentence about allocating awards among agencies because it is not expected to come up in cases that OHA handles.

Section 4.626 How will an appeal from a decision be handled?

In this section we have retained the concept of the ''agency review'' section of the model rules, 1 CFR 315.308, that review of adjudicative officer decisions on applications take place in accordance with the Department's regular review proceedings. For example:

- An appeal from a decision of an administrative law judge on an application for an award in a proceeding under the Taylor Grazing Act would be appealed to IBLA under 43 CFR 4.478(e), 4.410 *et seq.* IBLA would render a final decision for the Department.
- An appeal from a decision of an OHA administrative law judge on an application for an award in a proceeding under the Indian Self-Determination and Education Assistance Act involving the Indian Health Service would be appealed to the Departmental Appeals Board, Department of Health and Human Services. The Board would render a final decision for that agency.
- A decision by a panel of judges of the Interior Board of Contract Appeals on an application for an award in a proceeding under the Contract Disputes Act would be final for the Department.

Section 4.627 May I seek judicial review of a final Departmental or other agency decision?

This section is based on the ''judicial review'' section of the model rules, 1 CFR 315.309.

Section 4.628 How will I obtain payment of an award?

This section is based on the ''payment of award'' section of the model rules, 1 CFR 315.310.

IV. Review Under Procedural Statutes and Executive Orders

A. Regulatory Planning and Review (E.O. 12688)

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has reviewed a summary of this rule and has determined that this is not a significant rule. OMB has not reviewed the rule itself under Executive Order 12866.

1. This rule would not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, competition, jobs, the environment, public health or safety, or other units of government. A cost-benefit and economic analysis is not required. These amended regulations would have virtually no effect on the economy because they merely implement amendments to EAJA that are already in effect.

2. This rule would not create inconsistencies with or interfere with other agencies' actions, since all agencies are subject to EAJA and its amendments.

3. This rule would not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. These proposed regulations have to do only with the procedures implementing EAJA, not with entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This rule does not raise novel legal or policy issues. The proposed regulations would merely implement amendments to EAJA that are already in effect.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed regulations merely implement amendments to EAJA that are already in effect. A Small Entity Compliance Guide is not required.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

1. Would not have an annual effect on the economy of $100 million or more. The proposed regulations merely implement amendments to EAJA that are already in effect. They should have no effect on the economy.

2. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, would not affect costs or prices for citizens, individual industries, or government agencies.

3. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, should have no effects, adverse or beneficial, on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*), we find that:

1. This rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, would neither uniquely nor significantly affect these governments. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

2. This rule would not produce an unfunded Federal mandate of $100 million or more on State, local, or tribal governments or the private sector in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

E. Takings (E.O. 12630)

In accordance with Executive Order 12630, we find that the rule would not have significant takings implications. A takings implication assessment is not required. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, should have no effect on property rights.

F. Federalism (E.O. 13132)

In accordance with Executive Order 13132, we find that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. There is no foreseeable effect on states from updating OHA's procedural regulations implementing EAJA, based on amendments to that Act. A Federalism Assessment is not required.

G. Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Because these regulations would merely implement amendments to EAJA that are already in effect, they would not burden either administrative or judicial tribunals.

H. Paperwork Reduction Act

This proposed rule would not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. The proposed rule is an administrative and procedural rule that simply updates existing procedural regulations implementing EAJA, based on amendments to that Act.

I. National Environmental Policy Act

The Department has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500, and the Department of the Interior Departmental Manual (DM). CEQ regulations, at 40 CFR 1508.4, define a ''categorical exclusion'' as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions. 40 CFR 1507.3. The Department has determined that this proposed rule is categorically excluded from further environmental analysis under NEPA in accordance with 516 DM 2, Appendix 1, which categorically excludes ''[p]olicies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature.'' In addition, the Department has determined that none of the extraordinary circumstances listed in 516 DM 2, Appendix 2, applies to the proposed rule. The proposed rule is an administrative and procedural rule that simply updates existing procedural regulations implementing EAJA, based on amendments to that Act. Therefore, neither an environmental assessment nor an environmental impact statement under NEPA is required.

J. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, the Department of the Interior has evaluated potential effects of these rules on Federally recognized Indian tribes and has determined that there are no potential effects. These rules would not affect Indian trust resources; they would merely implement amendments to EAJA that are already in effect.

K. Effects on the Nation's Energy Supply

In accordance with Executive Order 13211, we find that this regulation does not have a significant effect on the nation's energy supply, distribution, or use. Updating OHA's procedural regulations implementing EAJA, based on amendments to that Act, would not affect energy supply or consumption.

L. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§ '' and a numbered heading; for example, § 4.601 What is the purpose of these regulations?) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure; Claims; Equal access to justice.

Dated: September 27, 2005.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

For the reasons set forth in the preamble, the Office of Hearings and Appeals proposes to revise part 4, subpart F, of title 43 of the Code of Federal Regulations as set forth below:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

* * * * *

Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

General Provisions

Sec.

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4.602 What definitions apply to this subpart?
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Authority: 5 U.S.C. 504(c)(1).

Subpart F—Implementation of the Equal Access to Justice Act in Agency Proceedings

General Provisions

§ 4.601 What is the purpose of this subpart?

The Equal Access to Justice Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Department of the Interior. Under the Act, an eligible party may receive an award when it prevails over the Department or other agency, unless the position of the Department or other agency was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Office of Hearings and Appeals will use in ruling on those applications.

§ 4.602 What definitions apply to this subpart?

As used in this subpart:

Act means section 203(a)(1) of the Equal Access to Justice Act, Pub. L. 96–481, 5 U.S.C. 504, as amended.

Adjudicative officer means the deciding official(s) who presided at the adversary adjudication, or any successor official(s) assigned to decide the application.

Adversary adjudication means any of the following:

(1) An adjudication under 5 U.S.C. 554 in which the position of the Department or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding;

(2) An appeal of a decision of a contracting officer made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Interior Board of Contract Appeals pursuant to section 8 of that Act (41 U.S.C. 607);

(3) Any hearing conducted under section 6103(a) of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*); or

(4) Any hearing or appeal involving the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb *et seq.*).

Affiliate means:

(1) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant; or

(2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest.

Demand means the express demand of the Department or other agency that led to the adversary adjudication, but does not include a recitation by the Department or other agency of the maximum statutory penalty:

(1) In the administrative complaint; or

(2) Elsewhere when accompanied by an express demand for a lesser amount.

Department means the Department of the Interior or the component of the Department that is a party to the adversary adjudication (*e.g.*, Bureau of Land Management).

Final disposition means the date on which either of the following becomes final and unappealable, both within the Department and to the courts:

(1) A decision or order disposing of the merits of the proceeding; or

(2) Any other complete resolution of the proceeding, such as a settlement or voluntary dismissal.

Other agency means any agency of the United States or the component of the agency that is a party to the adversary adjudication before the Office of Hearings and Appeals, other than the Department of the Interior and its components.

Party means a party as defined in 5 U.S.C. 551(3) that meets the eligibility criteria set forth in § 4.604.

Position of the Department or other agency means:

(1) The position taken by the Department or other agency in the adversary adjudication; and

(2) The action or failure to act by the Department or other agency upon which the adversary adjudication is based.

Proceeding means an adversary adjudication as defined in this section.

You means a party to an adversary adjudication.

§ 4.603 What proceedings are covered by this subpart?

(a) The Act applies to adversary adjudications conducted by the Office of Hearings and Appeals, including proceedings to modify, suspend, or revoke licenses if they are otherwise adversary adjudications.

(b) The Act does not apply to:

(1) Other hearings and appeals conducted by the Office of Hearings and Appeals, even if the Department uses procedures comparable to those in 5 U.S.C. 554 in such cases;

(2) Any proceeding in which the Department or other agency may prescribe a lawful present or future rate; or

(3) Proceedings to grant or renew licenses.

(c) If a hearing or appeal includes both matters covered by the Act and matters excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 4.604 When am I eligible for an award?

(a) To be eligible for an award of attorney fees and other expenses under the Act, you must:

(1) Be a party to the adversary adjudication for which you seek an award; and

(2) Show that you meet all conditions of eligibility in this section.

(b) You are an eligible applicant if you are any of the following:

(1) An individual with a net worth of $2 million or less;

(2) The sole owner of an unincorporated business who has a net worth of $7 million or less, including both personal and business interests, and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a new worth of $7 million or less and 500 or fewer employees; or

(6) For purposes of § 4.605(c), a small entity as defined in 5 U.S.C. 601(6).

(c) For the purpose of eligibility, your net worth and the number of your employees must be determined as of the date the proceeding was initiated.

(1) Your employees include all persons who regularly perform services for remuneration under your direction and control.

(2) Part-time employees must be included on a proportional basis.

(d) You are considered an ''individual'' rather than a ''sole owner of an unincorporated business'' if:

(1) You own an unincorporated business; and

(2) The issues on which you prevail are related primarily to personal interests rather than to business interests.

(e) To determine your eligibility, your net worth and the number of your employees must be aggregated with the net worth and the number of employees of all of your affiliates. However, this paragraph does not apply if the adjudicative officer determines that aggregation would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities.

(f) The adjudicative officer may determine that financial relationships other than those described in the definition of ''affiliate'' in § 4.602 constitute special circumstances that would make an award unjust.

(g) If you participate in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible, you are not eligible for an award.

§ 4.605 Under what circumstances may I receive an award?

(a) You may receive an award for your fees and expenses in connection with a proceeding if:

(1) You prevailed in the proceeding or in a significant and discrete substantive portion of a proceeding; and

(2) The position of the Department or other agency over which you prevailed was not substantially justified. The Department or other agency has the burden of proving that its position was substantially justified.

(b) An award will be reduced or denied if you have unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) This paragraph applies to an adversary adjudication arising from an action by the Department or other agency to enforce compliance with a statutory or regulatory requirement:

(1) If the demand of the Department or other agency in the action is excessive and unreasonable compared with the adjudicative officer's decision, then the adjudicative officer must award you your fees and expenses related to defending against the excessive demand, unless:

(i) You have committed a willful violation of law;

(ii) You have acted in bad faith; or

(iii) Special circumstances make an award unjust.

(2) Fees and expenses awarded under this paragraph will be paid only if appropriations to cover the payment have been provided in advance.

§ 4.606 What fees and expenses may be allowed?

(a) The adjudicative officer must base awards under this subpart on rates customarily charged by persons engaged in the business of acting as attorneys and expert witnesses, even if the services were made available to you without charge or at a reduced rate.

(1) The maximum that can be awarded for the fee of an attorney is $125 per hour.

(2) The maximum that can be awarded to compensate an expert witness is the highest rate at which the Department or other agency pays expert witnesses with similar expertise.

(3) An award may also include the reasonable expenses of the attorney or witness as a separate item, if the attorney or witness ordinarily charges clients separately for those expenses.

(b) The adjudicative officer may award only reasonable fees and expenses under this subpart. In determining the reasonableness of the fee for an attorney or expert witness, the adjudicative officer must consider the following:

(1) If the attorney or expert witness is in private practice, his or her customary fee for similar services;

(2) If the attorney or expert witness is your employee, the fully allocated cost of the services;

(3) The prevailing rate for similar services in the community in which the attorney or expert witness ordinarily performs services;

(4) The time actually spent in representing you in the proceeding;

(5) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(6) Any other factors that bear on the value of the services provided.

(c) The adjudicative officer may award the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on your behalf to the extent that:

(1) The charge for the service does not exceed the prevailing rate for similar services; and

(2) The study or other matter was necessary for preparation of your case.

Information Required From Applicants

§ 4.610 What information must my application for an award contain?

(a) Your application for an award of fees and expenses under the Act must:

(1) Identify you;

(2) Identify the proceeding for which an award is sought;

(3) Show that you have prevailed;

(4) Specify the position of the Department or other agency that you allege was not substantially justified;

(5) Unless you are an individual, state the number of your employees and those of all your affiliates, and describe the type and purpose of your organization or business;

(6) State the amount of fees and expenses for which you seek an award;

(7) Be signed by you or your authorized officer or attorney;

(8) Contain or be accompanied by a written verification under oath or under penalty of perjury that the information in the application is true and correct; and

(9) Unless one of the exceptions in paragraph (b) of this section applies, include a statement that:

(i) Your net worth does not exceed $2 million, if you are an individual; or

(ii) Your net worth and that of all your affiliates does not exceed $7 million in the aggregate, if you are not an individual.

(b) You do not have to submit the statement of net worth required by paragraph (a)(9) of this section if you do any of the following:

(1) Attach a copy of a ruling by the Internal Revenue Service that you qualify as a tax-exempt organization described in 26 U.S.C. 501(c)(3);

(2) Attach a statement describing the basis for your belief that you qualify under 26 U.S.C. 501(c)(3), if you are a tax-exempt organization that is not required to obtain a ruling from the Internal Revenue Service on your exempt status;

(3) State that you are a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)); or

(4) Seek fees and expenses under § 4.605(c) and provide information demonstrating that you qualify as a small entity under 5 U.S.C. 601, 15 U.S.C. 632, and 13 CFR part 121.

(c) You may also include in your application any other matters that you wish the adjudicative officer to consider in determining whether and in what amount an award should be made.

§ 4.611 What information must I include in my net worth exhibit?

(a) Unless you meet one of the criteria in § 4.610(b), you must file with your

application a net worth exhibit that meets the requirements of this section. The adjudicative officer may also require that you file additional information to determine your eligibility for an award.

(b) The exhibit must show your net worth and that of any affiliates when the proceeding was initiated. The exhibit may be in any form that:

(1) Provides full disclosure of your and your affiliates' assets and liabilities; and

(2) Is sufficient to determine whether you qualify under the standards in this subpart.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, if you object to public disclosure of information in any portion of the exhibit and believe there are legal grounds for withholding it from disclosure, you may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure.

(1) The motion must describe the information sought to be withheld and explain, in detail:

(i) Why it falls within one or more of the exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b);

(ii) Why public disclosure of the information would adversely affect you; and

(iii) Why disclosure is not required in the public interest.

(2) You must serve the net worth exhibit and motion on counsel representing the agency against which you seek an award, but you are not required to serve it on any other party to the proceeding.

(3) If the adjudicative officer finds that the information should not be withheld from disclosure, it must be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit will be disposed of in accordance with the Department's procedures under the Freedom of Information Act, 43 CFR 2.11 *et seq.*

§ 4.612 What documentation of fees and expenses must I provide?

(a) Your application must be accompanied by full documentation of the fees and expenses for which you seek an award, including the cost of any study, analysis, engineering report, test, project or similar matter.

(b) You must submit a separate itemized statement for each professional firm or individual whose services are covered by the application, showing:

(1) The hours spent in connection with the proceeding by each individual;

(2) A description of the specific services performed;

(3) The rates at which each fee has been computed;

(4) Any expenses for which reimbursement is sought;

(5) The total amount claimed; and

(6) The total amount paid or payable by you or by any other person or entity for the services provided.

(c) The adjudicative officer may require you to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed, as required by § 4.624.

§ 4.613 When may I file an application for an award?

(a) You may file an application whenever you have prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding. You must file the application no later than 30 days after the final disposition of the proceeding.

(b) Consideration of an application for an award must be stayed if any party seeks review or reconsideration of a decision in a proceeding in which you believe you have prevailed, pending final disposition of the review or reconsideration of the decision.

(c) When the Department or other agency (or the United States on its behalf) appeals an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication will be made until either:

(1) A final and unreviewable decision is rendered by the court on the appeal; or

(2) The underlying merits of the case have been finally determined.

Procedures for Considering Applications

§ 4.620 How must I file and serve documents?

You must file and serve all documents related to an application for an award under this subpart on all other parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 4.611(c) for confidential information. The Department or other agency and all other parties must likewise file and serve their pleadings and related documents on you and on each other, in the same manner as other pleadings in the proceeding.

§ 4.621 When may the Department or other agency file an answer?

(a) Within 30 days after service of an application, the Department or other agency against which an award is sought may file an answer to the application. However, if consideration of an application has been stayed under § 4.613(b), the answer is due within 30 days after the final disposition of the review or reconsideration of the decision.

(1) Except as provided in paragraph (a)(2) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested. In such case, the adjudicative officer will issue a decision in accordance with § 4.625 based on the record before him or her.

(2) Failure to file an answer within the 30-day period will not be treated as a consent to the award requested if the Department or other agency either:

(i) Requests an extension of time for filing; or

(ii) Files a statement of intent to negotiate under paragraph (b) of this section.

(b) If the Department or other agency and you believe that the issues in the fee application can be settled, you may jointly file a statement of intent to negotiate a settlement. Filing this statement will extend for an additional 30 days the time for filing an answer, and the adjudicative officer may grant further extensions if you and the agency counsel so request.

(c) The answer must explain in detail any objections to the award requested and identify the facts relied on to support the Department's or other agency's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Department or other agency must include with the answer either supporting affidavits or a request for further proceedings under § 4.624.

§ 4.622 When may I file a reply?

Within 15 days after service of an answer, you may file a reply. If your reply is based on any alleged facts not already in the record of the proceeding, you must include with the reply either supporting affidavits or a request for further proceedings under § 4.624.

§ 4.623 When may other parties file comments?

Any party to a proceeding other than the applicant and the Department or other agency may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in the proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full

exploration of matters raised in the comments.

§ 4.624 When may further proceedings be held?

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, the adjudicative officer may order further proceedings, which will be held only when necessary for full and fair resolution of the issues and will be conducted as promptly as possible.

(b) The adjudicative officer may order further proceedings on his or her own initiative or in response to a request by you or by the Department or other agency. A request for further proceedings under this section must:

(1) Identify the information sought or the disputed issues; and

(2) Explain why the additional proceedings are necessary to resolve the issues.

(c) As to issues other than substantial justification (such as your eligibility or substantiation of fees and expenses), further proceedings under this section may include an informal conference, oral argument, additional written submissions, pertinent discovery, or an evidentiary hearing.

(d) The adjudicative officer will determine whether the position of the Department or other agency was substantially justified based on the administrative record of the adversary adjudication as a whole.

§ 4.625 How will my application be decided?

The adjudicative officer must issue a decision on the application promptly after completion of proceedings on the application. The decision must include written findings and conclusions on all of the following that are relevant to the decision:

(a) Your eligibility and status as a prevailing party;

(b) The amount awarded, and an explanation of the reasons for any difference between the amount requested and the amount awarded;

(c) Whether the position of the Department or other agency was substantially justified;

(d) Whether you unduly protracted the proceedings; and

(e) Whether special circumstances make an award unjust.

§ 4.626 How will an appeal from a decision be handled?

(a) If the adjudicative officer is an administrative law judge, you or the Department or other agency may appeal his or her decision on the application to the appeals board that would have jurisdiction over an appeal involving the merits of the proceeding. The appeal will be subject to the same rules and procedures that would apply to an appeal involving the merits of the proceeding. The appeals board will issue the final Departmental or other agency decision on the application.

(b) If the adjudicative officer is a panel of appeals board judges, their decision on the application is final for the Department or other agency.

§ 4.627 May I seek judicial review of a final decision?

You may seek judicial review of a final Departmental or other agency decision on an award as provided in 5 U.S.C. 504(c)(2).

§ 4.628 How will I obtain payment of an award?

(a) To obtain payment of an award against the Department or other agency, you must submit:

(1) A copy of the final decision granting the award; and

(2) A certification that no party is seeking review of the underlying decision in the United States courts, or that the process for seeking review of the award has been completed.

(b) If the award is against the Department:

(1) You must submit the material required by paragraph (a) of this section to the following address: Director, Office of Financial Management, Policy, Management and Budget, U.S. Department of the Interior, Washington, DC 20240.

(2) Payment will be made by electronic funds transfer whenever possible. A representative of the Department will contact you for the information the Department needs to process the electronic funds transfer.

(c) If the award is against another agency, you must submit the material required by paragraph (a) of this section to the chief financial officer or other disbursing official of that agency. Agency counsel must promptly inform you of the title and address of the appropriate official.

(d) The Department or other agency will pay the amount awarded to you within 60 days of receiving the material required by this section.

[FR Doc. 05–19896 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–79–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 29

[Docket OST–2005–22602]

RIN 2105–AD46

Debarment and Suspension (Nonprocurement) Requirements

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This proposal would amend Department of Transportation regulations implementing the governmentwide nonprocurement suspension and debarment requirements. Specifically, the DOT proposes to adopt the optional lower tier coverage prohibiting excluded parties from participating in subcontracts at tiers lower than the first tier below a covered nonprocurement transaction.

DATES: Comments must be received on or before November 4, 2005.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dms.dot.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Ladd Hakes, Office of the Senior Procurement Executive, Office of Administration (M–61), (202) 366–4268, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard

Code Information Interchange (ASCII) (TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

Background

On November 26, 2003, the DOT, along with twenty-nine other agencies, published its final rule implementing changes to the governmentwide debarment and suspension common rule (68 FR 66534). These regulations were intended to resolve unnecessary technical differences between suspensions and debarments in the procurement and nonprocurement systems, revise the existing governmentwide suspension and debarment regulations in a plain language style and format, and make other improvements consistent with the purpose of the suspension and debarment system. One of the changes made to the suspension and debarment rules included limiting the exclusion from a suspension or debarment to only the first procurement level. Under the previous governmentwide regulations, all executive agencies applied suspensions and debarments to all procurement levels. However, in the revised governmentwide suspension and debarment regulations, each agency was given the option of applying an exclusion from a suspension or debarment to levels below the first procurement level.

This NPRM proposes to adopt the option to apply an exclusion under the suspension and debarment regulations to levels below the first procurement level. Many of the DOT programs involve billions of dollars in grants that are obligated to construction projects by States, localities, and other recipients. For instance, in fiscal year 2003 alone, the DOT apportioned $24,129,858,248 to the States for highway construction under the Federal-aid Highway Program. Since Federal Highway Administration regulations governing the Federal-aid Highway Program require prime contractors to perform only 30 percent of the contract work themselves (less designated specialty items), a suspended or debarred contractor may continue to receive significant Federal-aid Highway work by continuing to obtain subcontracts. Moreover, suspended or debarred contractors may continue to participate in subcontracts for other DOT programs as well, such as the Federal Transit Program and the Federal-aid Airport Program. The ability of excluded contractors to continue receiving significant subcontracts makes these DOT programs highly vulnerable to fraud, waste, and abuse. As such, DOT is proposing to include the optional lower tier coverage for all DOT nonprocurement transactions.

Section-by-Section Analysis

Section 29.220 Are any Procurement Contracts Included as Covered Transactions?

This NPRM would add a new paragraph (c) to this section to cover contracts that are awarded by any contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction that is expected to equal or exceed $25,000.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the DOT will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The DOT has determined that this document does not propose a significant rule within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal, since it would bring the DOT's regulations concerning the effect of a suspension and debarment back in line with the regulations that were in effect prior to November 26, 2003. These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) the Department has evaluated the effects of this proposed action on small entities and certifies that the proposed action would not have a significant economic impact on a substantial number of small entities. This proposal would bring the DOT's regulations concerning the effect of a suspension and debarment back in line with the regulations that were in effect prior to November 26, 2003 by excluding persons who have been suspended or debarred from participating in transactions beneath the first procurement level under a nonprocurement transaction. The only parties that might be economically impacted are subcontractors which are suspended or debarred. Based on its experience in implementing suspension and debarment regulations, the Department concludes that a significant number of entities, regardless of size, are unlikely to be suspended or debarred. For these reasons, the DOT certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). Indeed, it does not impose any mandates. This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the DOT has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The DOT has also determined that this proposed action would not preempt any State law or State regulation or affect the

States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number [Insert number], [Insert Program Name]. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities [apply/do not apply] to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 29

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Issued this 22nd day of September, 2005, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

In consideration of the foregoing, the DOT proposes to amend title 49, Code of Federal Regulations, part 29, as set forth below:

PART 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

1. The authority citation for part 29 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 11738 (3 CFR, 1973 Comp., p. 799); E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR 1989 Comp., p. 235).

2. In § 29.220, add paragraph (c) to read as follows:

§ 29.220 Are any procurement transactions included as covered transactions?

* * * * *

(c) The contract is awarded by any contractor, subcontractor, supplier, consultant or its agent or representative in any transaction, regardless of tier, to be funded or provided by the DOT under a nonprocurement transaction that is expected to equal or exceed $25,000. [See optional lower tier coverage shown in the diagram in the appendix to this part.]

[FR Doc. 05–19965 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 051603C]

RIN 0648–AQ65

Atlantic Highly Migratory Species; Amendments to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of comment period; rescheduling of the Joint Advisory Panel meeting.

SUMMARY: Due to the need to reschedule three public hearings regarding the draft Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP), and the extended recovery period needed for the Gulf region constituents from Hurricanes Katrina and Rita, NMFS is extending the comment period to provide adequate opportunity for public comment on the draft Consolidated HMS FMP and its proposed rule. NMFS is extending the comment period until March 1, 2006. The original comment period was scheduled to conclude on October 18, 2005. The three public hearings were cancelled in **Federal Register** documents on September 7 and 23, 2005. The draft Consolidated HMS FMP and its proposed rule describe a range of management measures that could impact fishermen and dealers for all HMS fisheries. NMFS is also rescheduling the October 11–13, 2005, HMS and Billfish Advisory Panels (AP) meeting to February 21–23, 2006. The intent of this meeting is to consider alternatives for the conservation and management of HMS as presented in the draft Consolidated HMS FMP and its proposed rule.

DATES: Written comments on the August 19, 2005 (70 FR 48804), proposed rule and the draft HMS FMP must be received no later than 5 p.m. on March 1, 2006.

The rescheduled AP meeting will be held from 1 p.m. to 5 p.m. on Tuesday, February 21, 2006, from 8 a.m. to 5 p.m. on Wednesday, February 22, 2006, and from 8 a.m. to 5 p.m. on Thursday, February 23, 2006.

ADDRESSES: The AP meeting will be held at the Holiday Inn, 8777 Georgia Avenue (Rt. 97), Silver Spring, MD 20910.

Written comments on the proposed rule and draft HMS FMP may be submitted to Karyl Brewster-Geisz, Highly Migratory Species Management Division by any of the following:

- Email: *SF1.060303D@noaa.gov*. Include in the subject line the following identifier: Atlantic HMS FMP.
- Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Draft HMS FMP.''
- Fax: 301–427–2592.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.

Copies of the draft HMS FMP and other relevant documents are available on the Highly Migratory Species Management Division's website at *www.nmfs.noaa.gov/sfa/hms* or by contacting Karyl Brewster-Geisz at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: For more information concerning the draft Consolidated HMS FMP and its proposed rule contact: Karyl Brewster-Geisz, Margo Schulze-Haugen, or Heather Stirratt at 301–713–2347 or fax 301–713–1917; Russ Dunn at 727–824–5399 or fax 727–824–5398; or Mark Murray-Brown at 978–281–9260 or fax 978–281–9340. For information regarding the rescheduled AP meeting contact Heather Stirratt at the specified number above.

SUPPLEMENTARY INFORMATION: The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the

Atlantic Tunas Convention Act (ATCA). The FMP for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, the FMP for Atlantic Billfish, finalized in 1988, and amendments to those FMPs are implemented by regulations at 50 CFR part 635.

On August 19, 2005 (70 FR 48804), NMFS published a proposed rule, requested comments on the draft Consolidated HMS FMP, and scheduled 24 public hearings throughout September and October 2005 to receive comments from fishery participants and other members of the public regarding the proposed rule and draft Consolidated HMS FMP. On September 7, 2005 (70 FR 53146), NMFS announced the cancellation of two public hearings (in New Orleans, LA, and Orange Beach, AL) due to Hurricane Katrina and one meeting location change. Later, on September 23, 2005 (70 FR 55814), NMFS announced the cancellation of a third public hearing (in Key West, FL) due to Hurricane Rita. NMFS intends to reschedule all three public hearings at a later date and will publish the dates, times, and locations of those hearings in the **Federal Register**. In order to incorporate these rescheduled hearings into the public comment period, and to provide adequate opportunities for public comment by constituents, NMFS is extending the public comment period on the proposed rule and draft HMS FMP to 5 p.m., March 1, 2006.

Finally, NMFS has cancelled the October 11–13, 2005, AP meeting, and rescheduled the meeting for February 21–23, 2006, at the Holiday Inn in Silver Spring, MD.

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: September 30, 2005.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–20002 Filed 9–30–05; 3:16 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 192

Wednesday, October 5, 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

Commodity Credit Corporation

Actions Taken To Ease Bulk Grain and Soybean Storage and Transportation Issues Exacerbated by Hurricane Katrina

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice; Request for Proposals.

SUMMARY: The Commodity Credit Corporation (CCC) is providing notification to all interested parties regarding additional actions announced on September 20, 2005, to reduce stress on the grain transportation system caused by Hurricane Katrina. The industry-focused actions include: (1) Assisting with the movement of barges of damaged corn from New Orleans; (2) providing incentives for alternative storage of grain; and (3) encouraging alternative shipping patterns to relieve pressure on the Mississippi River transportation system. CCC is seeking proposals from interested parties for: (1) barge movements of damaged corn from New Orleans; (2) alternative grain storage; and (3) offers to move grain through locations alternative to the Central Gulf.

DATES: Proposals should be submitted October 5, 2005 to be assured consideration.

ADDRESSES: CCC invites interested persons to submit proposals on this notice. Proposals may be submitted by any of the following methods:

- E-Mail: Send proposals to: *Richard.Mashek@kcc.usda.gov*.
- FAX: Send proposals to (816) 823–1805.
- Mail: Send proposals to: Contract Reconciliation Division, ATTN: Rick Mashek, P.O. Box 419205, Stop 8758, Kansas City, MO. 64133–4676.
- Hand Delivery or Courier: Deliver proposals to the above address.

FOR FURTHER INFORMATION CONTACT: James Goff, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250–0553, telephone (202) 720–5396, FAX (202) 690–3123, e-mail: *James.Goff@wdc.usda.gov*. Persons with disabilities who require alternative means for communication for regulatory information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: On September 20, 2005, the Department of Agriculture (USDA) announced additional steps to reduce further stress on the grain transportation system caused by Hurricane Katrina. The industry-focused actions outlined in the press release include assisting with the movement of barges of damaged corn from New Orleans, providing incentives for alternative storage of grain, and encouraging alternative shipping patterns to relieve pressure on the Mississippi River transportation system. The goals of these actions are to create velocity and capacity in the transportation system and to take advantage of under-utilized handling facilities. CCC is seeking proposals from interested parties on each of these actions.

The CCC Charter Act provides the authority for this action in sections 5(b) and (d). Section 5(b) makes available CCC materials and facilities required in connection with the production and marketing of agricultural commodities. Section 5(d) allows CCC to remove and dispose of, or aid in the removal and disposition of, surplus agricultural commodities.

I. Barge Movements of Damaged Corn

CCC will enter into agreements with operators to assist in moving damaged corn from the New Orleans area for the purpose of freeing up barges. CCC has not and will not take title to the corn. The barges are to move corn to locations up river in order to accelerate barge availability to geographical areas under harvest pressure.

CCC will consider proposals for up-river movements of damaged corn from New Orleans. Disposition of damaged corn must not have negative market impacts. This one-time offer of transportation assistance is only available to relocate barges and facilitate barge availability. Proposals must include the following information:

(1) Number of barges that contain damaged corn;

(2) Quantity of damaged corn to be moved;

(3) Market value of the corn as of date proposal is submitted:

(4) Current location;

(5) Proposed location where barge will be discharged;

(5) Proposed disposition and compensation received for the sale of the corn;

(6) Dollar amount per ton of assistance requested; and

(7) Whether the commodity loss or damage was covered by an insurance policy and, if so, the amount of indemnity received.

Operators entering into agreements with CCC will be required to meet certain documentation and certification requirements. These requirements will allow CCC to verify the movement of the barges, the quantity of corn, the value of the corn and compensation received for the delivery of the corn.

II. Storage of Commodities in Alternative Facilities

CCC will enter into agreements with operators to assist with the costs associated with storing corn and wheat in alternative storage facilities. The use of alternative storage is expected to facilitate producers' delivery of newly harvested commodities by producers. These alternative storage agreements are atypical, one-time storage arrangements. CCC is focused on providing a one-time storage incentive for proposals that contribute to easing harvest storage congestion and facilitate transportation in the Mississippi River transportation system. CCC may enter into agreements on up to 50 million bushels in aggregate of corn or wheat.

CCC will consider proposals for a one-time incentive payment to store wheat or corn in alternative storage facilities. The storage proposal must meet the following basic criteria:

(1) Storage facilities must be located on a tributary to the Mississippi River transportation system or no more than 100 miles from the river or its navigable tributaries;

(2) The storage proposal must be for an alternative storage method not used

in that the same manner or quantity as in the past 12 months;

(3) All grain to be stored in such an alternative facility must be company-owned; and

(4) All grain to be stored in such an alternative facility must be accounted for through inventory records.

Proposals must include the following information:

(1) Location of the storage site;

(2) Description of alternative storage facility;

(3) Quantity of grain stored in the alternative storage facility in the past 12 months;

(4) Quantity of corn or wheat to be stored in facility;

(5) Information on the severity of storage congestion in the geographical area including any other facility within 10 miles of such site; and

(6) Dollar amount per bushel of incentive payment requested.

Operators entering into agreements with CCC will be required to meet certain documentation and certification requirements. These requirements will allow CCC to verify the quantity of corn or wheat stored in the alternative storage facility.

III. Transportation Differential

CCC is seeking proposals on up to 200,000 metric tons (MT, 2204.623 pounds) for a transportation differential incentive on the movement of corn, wheat or soybeans through regions other than the Central Gulf. This is designed to reduce transportation demand on the Mississippi River system and alleviate costs associated with these alternative transportation modes and handling locations. The movement of corn, wheat or soybeans subject to the differential must be completed by November 1, 2005. This incentive is intended to encourage new routes and is destination neutral.

Re-direction of existing sales and new sales are eligible. There are no restrictions on flagging of ocean carriers or on the interested parties' domicile. Transshipments are allowed if the eligible commodity has been shipped from the customs territory of the U.S. via Great Lakes coastal range and its identity has been preserved until shipped from Canada. Proposed transshipment routes must be included in the proposal.

Interested parties must demonstrate:

(1) Financial ability to perform;

(2) Performance history in the movement of bulk grains;

(3) Access to handling facilities through ownership, contractual or put-through agreement, and

(4) That they are not currently debarred, suspended or proposed for debarment from any Federally administered program.

The proposal must include:

(1) The commodity to be shipped;

(2) Tonnage of the commodity (minimum 10,000 MT);

(3) Final intended destination including transshipment routes if any;

(4) Transportation mode;

(5) Proposed rate of incentive per metric ton (MT) of the commodity;

(6) Time-frame for completion; and

(7) Explanation as to how the movement reduces transportation demand on the Mississippi River system.

Interested parties may submit multiple proposals.

IV. Proposal Evaluation Criteria and Award

Proposals must be evaluated objectively in accordance with the regulations on ''Competition in the awarding of discretionary grants and cooperative agreements'' found at 7 CFR 3015.158. The following criteria must be used equally in the evaluation:

(1) Proposal's cost in relation to current market values for both commodities and transportation;

(2) Net positive impact on transportation logjams; and

(3) Overall cost effectiveness of proposal.

CCC will notify interested parties of approval of their proposals on October 17, 2005.

Signed at Washington, DC September 29, 2005.

Michael W. Yost,

Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 05–19999 Filed 9–30–05; 3:02 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Census Bureau

Decennial Short Form Experiment

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 5, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Elizabeth Martin, Census Bureau, Building 3, Room Number 3715, Washington, DC 20333, 301–763–4905 (*elizabeth.ann.martin@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Introduction

The Census Bureau plans to conduct an experimental mailing for the Decennial Short Form. The goal of this experiment is to improve the quality of data collected in the 2010 Census and the response to the mailed Short Form.

The experiment will include treatment groups that encompass three objectives. The first objective of the test is to evaluate the effects of the wording of the instruction about whom to list as Person 1. The instruction used in Census 2000 caused confusion and errors by respondents in cognitive interviews. Consequently, the instruction was revised to try to correct the problems identified in cognitive testing. The revised version has been through two additional rounds of cognitive testing, and it seems to promote more accurate responses. The field test will provide empirical evidence that we will use to evaluate the success of the revised instruction.

The second goal of the field test is to evaluate an additional question series that is designed to alleviate respondent confusion about what constitutes a completed form. The additional question will provide respondents with a clear stopping point, which is currently lacking. (Respondents in previous cognitive interviews spent considerable time trying to figure out when and where they are supposed to stop.) The final question series will collect the respondent's name, phone number, and proxy status. (In some cases, someone outside the household completes the questionnaire—*e.g.*, a child of an elderly individual. This type of respondent is a ''proxy'' respondent for the household.) This information will be used to evaluate the effect of the revised instruction on the frequency with which respondents erroneously leave themselves off the form. An experimental version will further ask respondents to make sure that the forms

are complete before they mail them back.

The third goal of the field test is to evaluate how a compressed mailing schedule with a ''due date'' on the form impacts the rate and speed of response. By ''compressed'' we mean that the mailing schedule will differ from the standard 2000 Census approach, where the Short Form is mailed 2 weeks before ''Census Day.'' In the compressed approach, we will time the mailing so that households receive the questionnaire a few days before ''Census Day.'' ''Census Day'' for this test will be approximately one month after we receive OMB approval.

Background

Research by Dillman, Parsons, and Mahon-Taft (2004) revealed that the instruction used in Census 2000 caused serious confusion and errors by respondents in cognitive interviews. Almost half (13 of 30) of the respondents expressed confusion about whom to list as Person 1, and 13 percent left themselves or someone else off the form entirely. Misunderstanding this instruction may cause coverage errors since subsequent questions ask for each person's relationship to Person 1—the householder. Respondents who list the wrong person as Person 1 will be reporting relationship incorrectly for the members of their households.

Another challenge in the current questionnaire is that some respondents are unclear what constitutes a completed form. Respondents in recent cognitive interviews spent considerable time trying to figure out when and where they are supposed to stop. While this may not affect the quality of the data, it does increase respondent burden and may also delay return of the form.

Finally, the mail back response rate and the speed with which households return their questionnaires is highly correlated with the cost of the Decennial Census. The current form does not provide households with any indication of the questionnaire due date. This fact may delay response, and therefore increase the number of contacts (followup mailings and in-person contacts) necessary to obtain a completed questionnaire.

Based on these issues, we have designed a field test to evaluate new methods to address these concerns. There are three objectives of this special mailout test:

1. Evaluate the effects of the wording of the instruction about who to list as Person 1.

2. Evaluate the proportion of respondents who forget to enumerate themselves by asking them to provide their personal information at the end of the form.

3. Evaluate how a compressed schedule with a fixed due date impacts unit response patterns.

In order to assess these treatments, the Census Bureau has proposed the following design:

- Group 1. Housing units in this treatment group will receive questionnaires with the same wording for the Person 1 instruction that we used in the Census 2000 questionnaire. In the Final Question, respondents will be asked to provide their name, telephone number and proxy information. The mail out schedule will be the conventional schedule. The questionnaire will be mailed two weeks before ''Census Day'', and there will be no explicit deadline.
- Group 2. Housing units in this treatment group will receive questionnaires with the revised wording for the Person 1 instruction. In the Final Question, respondents will be asked to provide their name, telephone number and proxy information. The mailout schedule will be the conventional schedule. The questionnaire will be mailed two weeks before ''Census Day'' and there will be no explicit deadline.
- Group 3. Housing units in this treatment group will receive questionnaires with the revised wording for the Person 1 instruction. In the Final Question, respondents will be asked to check over their answers before considering the survey complete. The mailout schedule will be the conventional schedule. The questionnaire will be mailed two weeks before ''Census Day'' and there will be no explicit deadline.
- Group 4. Housing units in this treatment group will receive questionnaires with the revised wording for the Person 1 instruction. In the Final Question, respondents will be asked to check over their answers before considering the survey complete. The mailout schedule will be compressed, so that the survey is received closer to ''Census Day'' and an explicit due date will be provided.

II. Method of Collection

The Census Bureau will select a national sample of households for the Short Form Mail Experiment. The sample will be drawn from the U.S. Postal Service (USPS) Delivery Sequence File (DSF), which contains all delivery point addresses serviced by the USPS. The USPS list sometimes misses new housing, includes vacant units, excludes addresses where the addressee has requested removal from the list, and may have limited information for individuals who live in apartments or who have post office boxes and rural route addresses. Even so, it is the most cost effective approach available for the test. We do not anticipate that the limitations of the address list will have a substantial impact on the results of the experiment.

In order to obtain completed surveys from 10,000 households, we plan to draw an initial sample of 24,000 households. (Since previous Census Bureau mailout tests have obtained response rates of 40 to 50 percent, we have assumed a response rate of 45 percent and an undeliverable rate of 7 percent.) The sample will be allocated proportionately across the 50 states and the District of Columbia.

We will mail the following independent mailing pieces to households at all sampled addresses: An advance letter, an original questionnaire with postage-paid return envelope, and a reminder card. A replacement questionnaire with postage-paid return envelope will be mailed to those who request them. All mailing pieces will be delivered by the USPS via first class postage.

The advance letter will be delivered approximately three weeks after we receive approval from OMB to conduct the test. This letter will inform respondents that they will soon receive a census form. About a week later, each sampled address will receive a mailing package that includes the questionnaire (English only) and a return envelope. Approximately one week after the initial questionnaires have been delivered, the USPS will deliver a reminder post card to each address. This postcard—which will be mailed seven days following the mailing of the questionnaire—will serve as a thank-you for respondents who have mailed back the questionnaire and will be a reminder for those who have not. A second postcard, which will be mailed approximately 10 days later, will be sent only to non-respondents.

III. Data

OMB Number: None.

Form Number: D–61A.

Type of Review: Regular.

Affected Public: Individuals.

Maximum Number of Respondents: 24,000 housing units.

Estimated Time Per Response: All questionnaires will require approximately 10 minutes for response.

Estimated Total Annual Burden Hours: A maximum burden of 4,000 hours

Estimated Total Annual Cost: There is no cost to respondents except for their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 29, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–19894 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Ghashim Group, Inc.; Mazen Ghashim; MNC Group International, In the Matter of: Ghashim Group, Inc., d.b.a. KZ Results, 3334 Walnut Bend Land, Houston, Texas 77042, and Mazen Ghashim, 10734 Overbrook Lane, Houston, Texas 77042, Respondents, and MNC Group International, Inc., d.b.a. Wearform, d.b.a. Sports Zone, d.b.a. Soccer Zone, 3334 Walnut Bend Lane, Houston, Texas 77042; Related Person

Order Renewing Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I renew for 180 days an Order temporarily denying the export privileges under the EAR of: Ghashim Group, Inc. doing business as (''d.b.a.'') KZ Results, 3334 Walnut Bend Lane, Houston, Texas 77042 (''Ghashim Group'') and Mazen Ghashim, 10734 Overbrook Lane, Houston, Texas 77042 (hereinafter collectively referred to as the ''Respondents''); and related person MNC Group International, Inc. d.b.a. Wearform, d.b.a. Sports Zone, and d.b.a. Soccer Zone, 3334 Walnut Bend Lane, Houston, Texas 77042 (''MNC'').

On April 7, 2005, I found that evidence presented by BIS demonstrated that the Respondents conspired to commit acts that violated the EAR, that such violations had been deliberate and covert, and that there was a strong likelihood of future violations, particularly given the nature of the transactions and the elaborate steps taken by Respondents to avoid detection by the U.S. Government while knowing that their actions were in violation of the EAR. 70 FR 17,645 (Apr. 7, 2005). This finding was based on evidence that indicated that Respondents had conspired with others to cause computers, which are subject to the EAR and controlled for national security and anti-terrorism reasons, to be illegally exported to Syria. The evidence also indicated that, after learning of the EAR requirements governing the export of computers to Syria, Respondents developed and implemented a scheme to avoid these requirements by causing computers to be exported to Syria through the United Arab Emirates with knowledge that violations of the EAR would occur.

I also found that MNC was a Related Person pursuant to 15 CFR 766.23 because it is owned and operated by Mazen Ghashim, who is the President of Ghashim Group, and it is operated out of the same facilities as Ghashim Group. The evidence showed Ghashim and MNC conspired to export garment samples, items that are subject to the EAR, from the United States to Syria without the required BIS export licenses in violation of the Regulations.

BIS believes that all of the facts found in the original Order continue to justify the renewal of the Order, particularly given the nature of the transactions and the steps that have been taken by Respondents to avoid detection by the U.S. Government while knowing their actions were in violation of the EAR. BIS believes that the evidence described in its initial Temporary Denial Order request supports this Order.

Based on the evidence submitted by BIS, I find that renewal of the Order naming Respondents and the Related Person is necessary, in the public interest, to prevent an imminent violation of the EAR. A copy of the request for renewal of this Order was served upon Respondents and the Related Person in accordance with the requirements of 15 CFR 766.24 of the EAR, and no responses were received in opposition to this request within the applicable time period described in that section.

It is therefore ordered:

First, that the Respondents, Ghashim Group, Inc. D.B.A. KZ Results, 3334 Walnut Bend Lane, Houston, Texas 77042, its successors or assigns, and when acting for or on behalf of Ghashim Group, Inc., its officers, representatives, agents, or employees; Mazen Ghashim 10734 Overbrook Lane, Houston, Texas 77042, and, when acting for or on behalf of Mazen Ghashim, his representatives, agents, assigns or employees; and Related Person MNC Group International, Inc. d.b.a. Wearform, d.b.a. Sports Zone, and d.b.a. Soccer Zone, 3334 Walnut Bend Lane, Houston, Texas 77042, its successors or assigns, and when acting for or on behalf of MNC Group International, Inc., its officers, representatives, agents, or employees (collectively, the ''Denied Persons''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaciton involving any item exported

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[1] The EAR, which are currently codified at 15 CFR Parts 730–774 (2005), are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (2000) (the ''Act''). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12,924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR 200 Comp. 397 (2001)), continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1707 (2000)) (''IEEPA''). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 2, 2005, (70 FR 45,273 (Aug. 5, 2005)), continued the Regulations in effect under the IEEPA.

or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the ear that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the EAR that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) and Section 766.23(c) of the EAR, the Respondents and the Related Person, respectively, may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

The Order becomes effective on October 3, 2005, and shall remain in effect for 180 days until and including March 31, 2006. In accordance with the provisions of Section 766.24(d) and Section 766.23(c) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date, on or before March 11, 2006, with the Assistant Secretary for Export Enforcement. The Respondents and the Related Person may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order, on or before March 24, 2006.

A copy of this Order shall be served on the Respondents and the Related Person, and shall be published in the **Federal Register.**

Entered this 28th day of September, 2005.

Thomas W. Andrukonis,

Acting Deputy Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 05–19895 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–427–801, A–428–801, A–475–801, A–412–801)

Antifriction Bearings and Parts Thereof from France, Germany, Italy, and the United Kingdom; Five–Year Sunset Reviews of Antidumping Duty Orders; Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 1, 2005, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, Italy and the United Kingdom pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of the notice of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties and inadequate responses from respondent interested parties, the Department conducted expedited sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Fred W. Aziz, Office 5, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114 or (202) 482–4023.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2005, the Department initiated sunset reviews of the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, Italy, and the United Kingdom pursuant to section 751(c) of the Act. *See Initiation of Five–Year (''Sunset'') Reviews*, 70 FR 31423 (June 1, 2005). The Department received Notices of Intent to Participate from the Timken Company, Pacamor Kubar Bearings, RBC Bearings, and NSK Corporation (NSK USA) (collectively, ''the domestic interested parties'') within the deadline specified in 19 CFR 351.218(d)(1)(i) of the Department's regulations (''Sunset Regulations''). The domestic interested parties claimed interested–party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States. We received complete substantive responses from the domestic interested parties within the 30–day deadline specified in 19 CFR 351.218(d)(3)(i).

We did not receive substantive responses from any respondent interested parties in the sunset reviews of the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, or Italy. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of these orders.

For the sunset review of the antidumping duty order on antifriction bearings and parts thereof from the United Kingdom, the Department received a substantive response from respondent NSK Europe Ltd. and NSK Bearings Ltd. (collectively, NSK UK). The Department found that NSK UK did not meet the adequacy threshold pursuant to section 351.218(e)(1)(ii)(A) of the Sunset Regulations. For more information, see the Adequacy Determination Memorandum from the Sunset Team to Laurie Parkhill, dated July 21, 2005. As a result, pursuant to section 751(c)(3)(B) of the Act and 19

CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this order.

Scope of the Orders

Ball Bearings and Parts Thereof

The products covered by these orders are ball bearings and parts thereof (BBs). These products include all bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS subheadings above are provided for convenience and customs purposes, written descriptions of the scope of these orders remain dispositive.

Spherical Plain Bearings, Mounted or Unmounted, and Parts Thereof (France only):

These products include all spherical plain bearings (SPBs) that employ a spherically shaped sliding element and include spherical plain rod ends. Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50,10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.10.00, 8803.20.00, 8803.30.00, and 8803.90.90. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order is dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the these orders. For unfinished parts, such parts are included if (1) they have been heat–treated, or (2) heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

For a listing of scope determinations which pertain to the orders, see the Scope Determination Memorandum (Scope Memorandum) from the Antifriction Bearings Team to Laurie Parkhill, dated April 15, 2005. The Scope Memorandum is on file in the Central Records Unit (CRU), Main Commerce Building, Room B–099, in the General Issues record (A–100–001) for the 03/04 reviews.

This sunset review covers imports of all producers and exporters of ball bearings, except for Paul Müller, for which the order was revoked. *See Antifriction Bearings and Parts Thereof From: France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574 (September 15, 2004).

Analysis of Comments Received

All issues raised in these cases are addressed in the ''Issues and Decision Memorandum'' from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 29, 2005 (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in the CRU, Room B–099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on antifriction bearings and parts thereof from France, Germany, Italy, and the United Kingdom would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/exporters/producers	Weighted–average margin (percent)
France (BBs).	
SKF France	66.42
SNR Roulements	56.50
INA France	66.18
All Others	65.13
France (SPBs).	
SKF France	39.00
All Others	39.00
Germany (BBs).	
SKF Germany	132.25
FAG Germany	70.41
INA	31.29
All Others	68.89
Italy (BBs).	
SKF Italy	69.99
FAG Italy	68.29
All Others	155.57
United Kingdom.	
SKF	61.14
NSK/RHP	44.02
All Others	54.27

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5457 Filed 10–5–05; 8:45 am]

BILLING CODE: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–804

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan: Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 27, 2005, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) redetermination on remand of the final results of the antidumping duty administrative reviews on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan. See *NSK Ltd. v. United States*, Consol. Court No. 98–07–02527, slip op 05–77 (CIT 2005). The Department is now issuing these amended final results reflecting the court's decision.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1998, the Department published the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan for the period May 1, 1996, through April 30, 1997. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998). NSK Ltd. and NSK Corporation (hereafter ''NSK'') filed a lawsuit challenging the final results. On July 8, 2002, the CIT affirmed the Department's decision to classify NSK's repacking expenses as a selling expense under section 772(d)(1)(B) of the Tariff Act of 1930, as amended (the Act). See *NSK Ltd. v. United States*, 217 F. Supp. 2d 1291 (CIT 2002).

NSK appealed the CIT's judgment to the United States Court of Appeals for the Federal Circuit (CAFC). The CAFC vacated and remanded the Department's decision to classify NSK's repacking expenses as selling expenses and not movement expenses under section 772(d)(1)(B) of the Act. On February 18, 2005, pursuant to the CAFC's decision, the CIT remanded this case to the Department to revisit its classification of U.S. repacking expenses as selling expenses and provide an explanation for the inconsistent treatment of U.S. repacking expense, U.S. warehousing expense, and U.S. expense for shipping from warehouse to customer. See *NSK Ltd. v. United States*, Consol. Court No. 98–07–02527, slip op. 05–26 (CIT 2005). In accordance with the CIT's remand order in *NSK Ltd.*, slip op. 05–26, the Department filed its remand results on May 18, 2005. In those remand results, the Department reclassified repacking expenses as movement expenses and recalculated NSK's margins accordingly.

On June 27, 2005, the CIT affirmed the Department's final results of remand redetermination in their entirety. See *NSK Ltd.*, slip op 05–77. On July 14, 2005, the Department published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Japan: Notice of Court Decision Not in Harmony*, 70 FR 40688 (July 14, 2005). There was no appeal of the CIT's decision to the CAFC within the appeal period. Therefore, the CIT's decision is now final and conclusive.

Amendment to Final Results

We are now amending the final results of these reviews to reflect the final and conclusive decision of the court. The changes to our calculations with respect to NSK resulted in a change in the weighted–average margin for ball bearings from 2.35 percent to 2.34 percent and a change in the weighted–average margin for cylindrical roller bearings from 2.21 percent to 2.19 percent for the period of review. The Department will instruct U.S. Customs and Border Protection to liquidate entries of the ball bearings and cylindrical roller bearings from Japan produced by, exported to, or imported into the United States by NSK during the review period at the assessment rates the Department calculated for these amended final results of reviews.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–5460 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–836)

Glycine from the People's Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on glycine from the People's Republic of China pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (Sunset) Reviews*, 70 FR 31423 (June 1, 2005). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and inadequate response from respondent interested parties (in this case, no response), the Department conducted an expedited sunset review of the antidumping duty order pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(B) of the Department's regulations. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1388.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2005, the Department initiated a sunset review of the antidumping duty order on glycine from the People's Republic of China pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 70 FR 31423 (June 1, 2005). The Department received a Notice of Intent to Participate from the following domestic interested parties: the Glycine Fair Trade Committee (''Committee''), an *ad hoc* coalition of domestic producers, and its individual members, Hampshire Chemical Corp. and Chattem Chemicals, Inc. (collectively ''the domestic interested parties''), within the deadline specified in 19 CFR

351.218(d)(1)(I). The domestic interested parties claimed interested party status under section 771(9)(c) of the Act, as U.S. manufacturers of glycine, and sections 771(9)(E) and (F) of the Act, as a trade or business association of domestic manufacturers of glycine whose members are engaged in the production of glycine in the United States. The Department received a complete substantive response from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive any responses from the respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of this antidumping duty order.

Scope of the Order

The product covered by the order is glycine, which is a free–flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This order covers glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). In a separate scope ruling, the Department determined that D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order. *See Notice of Scope Ruilings*, 62 FR 62288 (November 21, 1997). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Analysis of Comments Received:

All issues raised in this review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 29, 2005, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memorandum include the likelihood of continuation or recurrence of dumping were the order revoked and the magnitude of the margin likely to prevail. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty order on glycine from the People's Republic of China would be likely to lead to continuation or recurrence of dumping at the rates listed below:

Producers/Exporters	Weighted–Average Margin (percent)
Baoding Mantong Fine Chemistry Co., Ltd. ...	155.89
Nantong Dongchang Chemical Industry Corp.	155.89
PRC–wide rate	155.89

Notification regarding Administrative Protective Order:

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5461 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–839

Certain Polyester Staple Fiber from the Republic of Korea: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. The period of review is May 1, 2003, through April 30, 2004. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Yasmin Bordas, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1174 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2005, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea covering the period May 1, 2003, through April 30, 2004 (70 FR 32756). The final results for the antidumping duty administrative review of certain polyester staple fiber from the Republic of Korea are currently due no later than October 4, 2005.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Because the Department requires additional time to review and analyze the comments submitted by interested parties regarding complex physical characteristic codes of control numbers, it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by October 4, 2005). Accordingly, the Department is extending the time limit for completion

of the final results to no later than December 5, 2005, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5459 Filed 10–4–05; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–506, A–583–508)

Porcelain–on-Steel Cooking Ware from the People's Republic of China and Taiwan; Five-year (''Sunset'') Reviews of Antidumping Duty Orders; Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 1, 2005, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty orders on porcelain–on-steel cooking ware from the People's Republic of China (''PRC'') and Taiwan, pursuant to section 751(c) of the Tariff Act of 1930, as amended, (''the Act''). On the basis of the notice of intent to participate and adequate substantive responses filed on behalf of the domestic interested parties, and inadequate responses from respondent interested parties, the Department conducted expedited sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–3020.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department initiated sunset reviews of the antidumping duty orders on porcelain–on-steel cooking ware from the PRC and Taiwan pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 70 FR 9919 (March 1, 2005). The Department received notices of intent to participate from a domestic interested party, Columbian Home Products, LLC (''Columbian''), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Columbian claimed interested party status pursuant to section 771(9)(C) of the Act as a U.S. producer of the domestic like product. We received a submission from the domestic interested party within the 30-day deadline specified in section 351.218(d)(3)(I) of the Department's regulations. However, we did not receive submissions from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted expedited sunset reviews of these orders.

Scope of the Orders

PRC

The merchandise covered by this order is porcelain–on-steel cooking ware from the PRC, including tea kettles, which do not have self–contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item 7323.94.00. HTS items numbers are provided for convenience and customs purposes. The written description of the scope remains dispositive.

In response to a request from CGS International, on January 30, 1991, the Department clarified that high quality, hand finished cookware, including the small basin, medium basin, large basin, small colander, large colander, 8'' bowl, 6'' bowl, mugs, ash tray, napkin rings, utensil holder and utensils, ladle, cream & sugar, and mixing bowls are properly considered kitchen ware and are, therefore, outside the scope of the order. Further, the Department clarified that CGS International's casserole, 12–cup coffee pot, 6–cup coffee pot, roasting pan, oval roaster, and butter warmer are within the scope of the order (*see Notice of Scope Rulings*, 56 FR 19833 (April 30, 1991)).

In response to a request from Texsport, on August 8, 1990, the Department determined that camping sets, with the exception of the cups and plates included in those sets, are within the scope of the order (*see Notice of Scope Rulings*, 55 FR 43020 (October 25, 1990)).

On March 8, 2000, Tristar Products' grill set with aluminum grill plate was found to be outside the scope of the order (*see Notice of Scope Rulings*, 65 FR 41957 (July 7, 2000)).

On October 29, 2003, Target Corporation's certain enamel–clad beverage holders and dispensers were found to be outside the scope of the order (*see Notice of Scope Rulings*, 70 FR 24533 (May 10, 2005)).

On January 4, 2005, Taybek International's Pro Popper professional popcorn popper was found to be within the scope of the order (*see Notice of Scope Rulings*, 70 FR 41374 (July 19, 2005)).

Taiwan

The merchandise covered by this order is porcelain–on-steel cooking ware from Taiwan that do not have self–contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchen ware and teakettles are not subject to this order The merchandise is currently classifiable under the HTS item number 7323.94.00. The HTS subheading is provided for convenience and customs purposes. The written description of the scope remains dispositive.

On August 23, 1990, in response to a request from RSVP, BBQ grill baskets were found to be outside the scope of the order (*see Notice of Scope Rulings*, 55 FR 43020 (October 25, 1990)).

On September 3, 1992, in response to a request from Mr. Stove Ltd., stove top grills and drip pans were found to be outside the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)).

On September 25, 1992, in response to a request from Metrokane Inc., the ''Pasta Time'' pasta cooker was found to be within the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)).

On August 18, 1995, Blair Corporation's Blair cooking ware items #1101 (seven piece cookware set), #271911 (eight–quart stock pot), and #271921 (twelve–quart stock pot) were found to be outside the scope of the order (*see Notice of Scope Rulings*, 60 FR 54213 (October 20, 1995)).

On October 30, 1996, Cost Plus, Inc.'s 10 piece porcelain–on-steel fondue set was found to be within the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1997)).

Analysis of Comments Received

All issues raised in these cases are addressed in the ''Issues and Decision Memorandum'' from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Holly A. Kuga, Acting Assistant Secretary for

Import Administration, dated September 27, 2005 (''Decision Memorandum''), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department of Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on our Web site at *http://ia.ita.doc.gov.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on porcelain–on-steel cooking ware from the PRC and Taiwan would likely lead to continuation or recurrence of dumping at the following percentage weighted–average margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (Percent)
PRC.	
China National Light Industrial Products Import and Export Corporation	66.65
PRC–wide Rate	66.65
Taiwan.	
First Enamel Industrial Corp.	9.04
Tian Shine Enterprise Co., Ltd.	1.99
Tou Tien Metal (Taiwan) Co., Ltd.	2.67
Li–Fong Industrial Co., Ltd.	2.63
Li–Mow Enameling Co. Ltd.	6.48
Receive Will Industry Co.	23.12
All Others Rate	6.82

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 27, 2005.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5456 Filed 10–5–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–307–820

Silicomanganese from Venezuela: Notice of Rescission of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Hornos Electricos de Venezuela (Hevensa), a Venezuelan producer and exporter of silicomanganese, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on silicomanganese from Venezuela. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 37749 (*Initiation Notice*). This administrative review covered the period of May 1, 2004, through April 30, 2005. We are now rescinding this review as a result of Hevensa's withdrawal of its request for an administrative review.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Brian Sheba, Maryanne Burke or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7868, Washington, DC 20230; telephone (202) 482–0145, (202) 482–5604 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on silicomanganese from Venezuela on May 23, 2002. *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Orders: Silicomanganese from India, Kazakhstan, and Venezuela*, 67 FR 36149 (May 23, 2002). On May 2, 2005, the Department published a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order for the period of May 1, 2004, through April 30, 2005. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspended Investigation*, 70 FR 22631 (May 2, 2005). Hevensa requested that the Department conduct an administrative review of the antidumping duty order on silicomanganese from Venezuela on May 31, 2005. In response to this request, the Department published the initiation of the antidumping duty administrative review on silicomanganese from Venezuela on June 30, 2005. *See Initiation Notice*. On September 12, 2005, Hevensa submitted a letter withdrawing its request for an administrative review. The request for review submitted by Hevensa was the only request for administrative review of this order for the period May 1, 2004, through April 30, 2005.

Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The notice was published on June 30, 2005. We received Hevensa's request on September 12, 2005, less than 90 days after publication of the notice. Since the sole party who requested this administrative review, Hevensa, has withdrawn its request in a timely manner, we are rescinding this review. The Department will issue appropriate assessment instructions to U.S. Customs and Border Protection within 15 days of publication of this notice.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(I) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5458 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–583–830)

Stainless Steel Plate in Coils from Taiwan; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Nichole Zink, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874 and (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on stainless steel plate in coils (SSPC) from Taiwan on May 21, 1999 (*See Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756). On June 30, 2004, the Department published a notice of initiation of an administrative review of the order on SSPC from Taiwan for the period May 1, 2003, through April 30, 2004. *See* 69 FR 39409. The respondents in this administrative review are: Ta Chen Stainless Pipe Co., Ltd.; Yieh United Steel Corporation; China Steel Corporation; Tang Eng Iron Works; PFP Taiwan Co., Ltd.; Yieh Loong Enterprise Co., Ltd.; Yieh Trading Co; Goang Jau Shing Enterprise Co., Ltd.; Yieh Mau Corporation; Chien Shing Stainless Co., Ltd.; East Tack Enterprise Co., Ltd.; Shing Shong Ta Metal Ind. Co., Ltd.; Sinkang Industries, Ltd.; Chang Mien Industries Co., Ltd.; and Chain Chin Industrial Co., Ltd. On June 7, 2005, the Department published in the **Federal Register** the notice of its preliminary intent to rescind this review. *See Stainless Steel Plate in Coils from Taiwan; Preliminary Rescission of Antidumping Duty Administrative Review*, 70 FR 33083. A final decision is currently due no later than October 5, 2005.

Extension of the Time Limit for Final Results of Administrative Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a final determination in an administrative review within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

In accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department determines that it is not practicable to complete the review within 120 days because we are currently considering whether to solicit additional data and/or comments regarding shipments of subject merchandise during the period of review. Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is fully extending the time limit for completion of the final results of this administrative review to 180 days, until December 4, 2005. However, December 4, 2005, falls on Sunday, and it is the Department's long–standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the final results is December 5, 2005.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5455 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Aviation Safety Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 5, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Debora Barr, (301) 713–3435, extension 103 or *Debora.R.Barr@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA has a responsibility to provide a safe working environment for its workforce and partners who are exposed to the risks associated with flying on behalf of the Agency. NOAA's aviation safety policy requires all individuals who fly on aircraft owned or operated by NOAA for mission operations, and all NOAA personnel who fly on any aircraft for mission operations in the performance of their official duties to be medically screened to identify individuals that could be placed in a work environment (flight) with the potential to aggravate existing medical conditions.

NOAA Marine and Aviation Operations (NMAO) administers NOAA's aviation safety policy through the Aviation Safety Program. NMAO requests medical history information from individuals requesting clearance to fly on behalf of NOAA mission operations to determine the individual's fitness for flight. This information, upon receipt, is reviewed by the NOAA Aviation Medical Examiner to determine whether or not to grant a NOAA Aeromedical Clearance Notice, receipt of which, authorizes participation in flight activities on behalf of NOAA.

II. Method of Collection

Applicants submit information via a secure web-based form or paper application. Telephone calls may be

required to clarify information submitted in the application. Methods of submittal include the Internet and facsimile transmission.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions, Federal Government, State, local or Tribal government.
Estimated Number of Respondents: 1,000.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 250.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 29, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–19893 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090205B]

Large Coastal Shark 2005/2006 Stock Assessment Data Workshop; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of workshop; correction.

SUMMARY: This document corrects a September 15, 2005, **Federal Register** notice that announced NMFS' large coastal shark (LCS) stock assessment Data workshop. That notice provided an incorrect address for the location of the workshop. This document provides the correct address. The date and time of the workshop remain unchanged.

DATES: The Data workshop will start at 1 p.m. on Monday, October 31, 2005, and will conclude at 1 p.m. on Friday, November 4, 2005.

ADDRESSES: The correct address for the Data workshop is the Bay Point Marriott Resort, 4200 Marriott Drive, Panama City Beach, FL 32408.

FOR FURTHER INFORMATION CONTACT: Julie Neer at (850) 234–6541; or Karyl Brewster-Geisz at (301) 713–2347, fax (301) 713–1917.

SUPPLEMENTARY INFORMATION:

Background

NMFS announced the Data workshop, the first of three workshops for the LCS 2005/2006 stock assessment, in a **Federal Register** notice on September 15, 2005 (70 FR 54537). The Data workshop will be held from October 31 - November 4, 2005, and will be conducted in a manner similar to the Southeast Data, Assessment, and Review (SEDAR) process. Further details regarding these workshops are provided in the September 15, 2005, notice and are not repeated here.

Need for Correction

In the original **Federal Register** notice, the address for the Data workshop contains an error and is in need of correction.

Correction

Accordingly, the September 15, 2005 (70 FR 54537) **Federal Register** notice concerning NMFS' LCS 2005/2006 stock assessment Data workshop that is the subject of FR Doc. 05–18355, is corrected as follows:

On page 54537, column 3, in the **ADDRESSES** section, line 3, the language ''4200 Marriott Drive, Bay Point, FL'' is corrected to read ''4200 Marriott Drive, Panama City Beach, FL''.

Dated: September 29, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–20018 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Commercial Availability Provision of the United States-Caribbean Basin Trade Partnership Act (CBTPA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

September 29, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Designation.

EFFECTIVE DATE: October 5, 2005.

SUMMARY: CITA has determined that certain compacted, plied, ring spun cotton yarns, with yarn counts in the range from 42 to 102 metric, classified in subheadings 5205.42.0020, 5205.43.0020, 5205.44.0020, 5205.46.0020, and 5205.47.0020 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in U.S. formed fabric used in men's and boys' woven cotton trousers and shirts, and women's and girls' woven cotton trousers, shirts, and blouses, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and ATPDEA. CITA hereby designates such apparel articles, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary country from U.S. formed fabrics containing such yarns, as eligible to enter free of quotas and duties under HTSUS subheading 9820.11.27, provided all other yarns used in the apparel articles are U.S. formed and all other fabrics used in the apparel articles are U.S. formed from yarns wholly formed in the United States. CITA also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in the referenced apparel articles, that are sewn or otherwise assembled in one or more eligible ATPDEA beneficiary countries from U.S. formed fabrics containing such yarns. The referenced apparel articles from U.S. formed fabrics containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns used in the apparel articles are U.S. formed and all other fabrics used in the apparel articles are U.S. formed from yarns wholly formed in the United States. CITA notes that this designation under the ATPDEA renders apparel articles, sewn or otherwise assembled in one or more eligible ATPDEA beneficiary countries, containing such yarns as eligible for quota-free and duty-

free treatment under HTSUS subheading 9821.11.13, provided the requirements of that subheading are met.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2582.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA (19 U.S.C. 2703(b)(2)(A)(v)(II)); Section 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamation 7351 of October 2, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA (19 U.S.C. 3203(b)(3)(B)(ii)); Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

BACKGROUND:

The commercial availability provisions of the CBTPA and the ATPDEA provide for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351 of October 4, 2000 and in Presidential Proclamation 7616 of October 31, 2002, the President proclaimed that this treatment would apply to such apparel articles from fabrics or yarns designated by the appropriate U.S. government authority in the **Federal Register**. In Section 6 of Executive Order No. 13191 of January 17, 2001; Executive Order 13277 of November 19, 2002; and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002, the CITA was authorized to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and the ATPDEA.

On May 23, 2005, the Chairman of CITA received a petition from AM&S Trade Service, L.L.P., on behalf of their client, Galey and Lord, Inc., alleging that certain compacted, plied, ring spun cotton yarns, with yarn counts in the range from 42 to 102 metric, classified in HTSUS subheadings 5205.42.0020, 5205.43.0020, 5205.44.0020, 5205.46.0020, 5205.47.0020, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested duty-free treatment under the CBTPA and the ATPDEA for men's and boys' woven cotton trousers and shirts and women's and girls' woven cotton trousers, shirts, and blouses that are both cut (or knit-to-shape) and sewn in one or more eligible CBTPA or ATPDEA beneficiary countries from U.S.-formed fabrics containing such yarns. On May 25, 2005, CITA published a **Federal Register** notice requesting public comment on the petition. See Request for Public Comments on Commercial Availability Petition under the United States-Caribbean Basin Trade Partnership Act (CBTPA) and the Andean Trade Promotion and Drug Eradication Act (ATPDEA), 70 FR 30705 (May 25, 2005). On June 16, 2005, CITA and the Office of the U.S. Trade Representative (USTR) sent memoranda seeking the advice of the Industry Trade Advisory Committee (ITAC) for Textiles and Clothing and the ITAC for Distribution Services. No advice was received from either ITAC. On June 16, 2005, CITA and USTR sent memoranda offering to consult with the Senate Finance Committee and the House Committee on Ways and Means. No consultations were requested on this petition. USTR requested the advice of the U.S. International Trade Commission (ITC) on the probable economic effects on the domestic industry of granting the petition.

Based on the information and advice received and its understanding of the industry, CITA determined that the yarns set forth in the request cannot be supplied by the domestic industry in commercial quantities in a timely manner. On July 22, 2005, the CITA and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired, as required by the CBTPA and ATPDEA.

CITA hereby designates men's and boys' woven cotton trousers and shirts, and women's and girls' woven cotton trousers, shirts, and blouses, made from U.S. formed fabrics containing certain compacted, plied, ring spun cotton yarns, with yarn counts in the range from 42 to 102 metric, classified in HTSUS subheadings 5205.42.0020, 5205.43.0020, 5205.44.0020, 5205.46.0020, and 5205.47.0020, that are sewn or otherwise assembled in an eligible CBTPA beneficiary country, as eligible to enter free of quotas and duties under HTSUS subheading 9820.11.27. However, all other yarns used in the referenced apparel articles must be U.S. formed and all other fabrics used in the referenced apparel articles must be U.S. formed from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 213(b)(2)(A)(vii) of CBERA (19 U.S.C. 2703(b)(2)(A)(vii)), and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

An ''eligible CBTPA beneficiary country'' means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

CITA also hereby designates such yarns as eligible under HTSUS subheading 9821.11.10, if used in men's and boys' woven cotton trousers and shirts, and women's and girls' woven cotton trousers, shirts, and blouses, sewn or otherwise assembled in one or more eligible ATPDEA beneficiary country from U.S. formed fabric containing such yarns. Such apparel containing such yarns shall be eligible to enter free of quotas and duties under this subheading, provided all other yarns used in the referenced apparel articles are U.S. formed and all other fabrics used in the referenced apparel articles are U.S. formed from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 204(b)(3)(B)(vi) of the ATPDEA, and that such articles are imported directly into the customs territory of the United States from an eligible ATPDEA beneficiary country.

An ''eligible ATPDEA beneficiary country'' means a country which the President has designated as an ATPDEA beneficiary country under section 203(a)(1) of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3202(a)(1)), and which has been the subject of a finding, published in the **Federal Register**, that the country has satisfied the requirements of section 203(c) and (d) of the ATPA (19 U.S.C. 3202(c) and (d)), resulting in the enumeration of such country in U.S.

note 1 to subchapter XXI of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–20115 Filed 10–4–05; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Activity; Notification Requirements for Coal and Wood Burning Appliances

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the July 20, 2005 **Federal Register** (70 FR 41690), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)(PRA), to announce the agency's intention to seek extension of its PRA approval of information collection requirements regarding certain coal and wood burning appliances pursuant to 16 CFR part 1406. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The Commission received no comments. The CPSC will use the information it obtains to monitor industry compliance with the requirements and to reduce risks of injuries from fires associated with the installation, operation, and maintenance of the appliances that are subject to the regulation.

Additional Information About the Request for Extension of Approval of Information Collection Activity

Title of information collection: Notification Requirements for Coal and Wood Burning Appliances.

Type of request: Extension of approval.

General description of respondents: Manufacturers or importers of coal and wood burning appliances.

Frequency of collection: Information will be submitted when there is any change to the required data or when a new model is introduced in the market.

Estimated number of respondents: 5 per year.

Estimated average number of responses per respondent: 1 per year.

Estimated number of responses for all respondents: 5 per year.

Estimated number of hours per response: 3 hours per year.

Estimated number of hours for all respondents: 15 hours per year.

Estimated annual cost of collection to all respondents: $384 per year.

Estimated total annual cost of the information collection requirements: $1,604 per year.

Comments: Comments on this request for extension of approval of an information collection activity should be submitted by November 4, 2005 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Comments may be sent by e-mail to *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

Copies of this request for approval of an information collection activity are available from Linda L. Glatz, Management & Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671.

Dated: September 29, 2005.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 05–19890 Filed 10–4–05; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Activity—Notification Requirements for Sound Levels of Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the July 20, 2005 **Federal Register** (70 FR 41690), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), to announce the agency's intention to seek extension of its PRA approval of information collection requirements regarding the sound levels of toy caps pursuant to 16 CFR 1500.18(a)(5). The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The Commission received no comments. The CPSC will use the information it obtains to monitor industry efforts to reduce the sound levels of toy caps, and to ascertain which firms are currently manufacturing or importing toy caps with peak sound levels between 138 and 158 decibels.

Additional Information About the Request for Extension of Approval of Information Collection Activity

Title of information collection: Notification Requirements for Sound Levels of Toy Caps.

Type of request: Extension of approval.

Frequency of collection: Reports will be collected 4 times per year.

General description of respondents: Manufacturers or importers of toy caps.

Estimated number of respondents: 10 per year.

Estimated average number of responses per respondent: 4 per year.

Estimated number of responses for all respondents: 40 per year.

Estimated number of hours per response: 1 hour per year.

Estimated number of hours for all respondents: 40 hours per year.

Estimated annual cost of collection to all respondents: $1,023 per year.

Estimated total annual cost of the information collection requirements: $8,800 per year.

Comments: Comments on this request for extension of approval of an information collection activity should be submitted by November 4, 2005 to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Comments may be sent by e-mail to *cpsc-os@cpsc.gov*. Comments may also be sent by facsimile to (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

Copies of this request for approval of an information collection activity are available from Linda L. Glatz, Management & Program Analyst, Office

of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–7671.

Dated: September 29, 2005.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 05–19891 Filed 10–4–05; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–44]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–44 with attached transmittal and policy justification.

Dated: September 29, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

28 SEP 2005
In reply refer to:
I-05/008866

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 05-44 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Brazil for defense articles and services estimated to cost $60 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Separate Cover:
Classified Annex

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-44

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Brazil

(ii) **Total Estimated Value:**

Major Defense Equipment*	$40 million
Other	$20 million
TOTAL	$60 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 30 MK 48 Mod 6 Advanced Technology Torpedoes, containers, exercise heads, devices, support and test equipment, spare and repair parts, personnel training and training equipment, publications and technical documentation, engineering and technical assistance, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department:** Navy (AHN)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 28 SEP 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Brazil – MK 48 Mod 6 Advanced Technology Torpedoes

The Government of Brazil has requested a possible sale of 30 MK 48 Mod 6 Advanced Technology Torpedoes, containers, exercise heads, devices, support and test equipment, spare and repair parts, personnel training and training equipment, publications and technical documentation, engineering and technical assistance, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $60 million.

The Government of Brazil is one of the major political and military powers in South America. It is vital to the U.S. national interest to support the Government of Brazil and assist them in developing and maintaining a strong and ready self-defense capability that will contribute to maintaining a regional military balance and help them become a stronger future coalition partner. The proposed sale is consistent with those objectives.

Brazil intends to use the purchase to upgrade and modernize its existing heavyweight torpedo capability. The existing torpedoes were purchased and delivered in the mid 1980s through the early 1990s. The modernization will enhance the capabilities of the Brazilian Navy and support its regional influence. The proposed sale of the torpedoes and support will upgrade existing inventories and improve overall Brazilian Naval Anti-Submarine and Anti-Surface Warfare capability to confront future coalition challenges. The proposed sale will not contribute to regional destabilization or upset the existing military balance. The proposed sale supports foreign policy and military missions.

The prime contractor will be Raytheon Corporation of Waltham, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Brazil. There will be U.S. Government and contractor representatives in country on a temporary basis to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–19897 Filed 10–4–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–36]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–36 with attached transmittal and policy justification.

Dated: September 29, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 SEP 2005
In reply refer to:
I-05/007718

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-36, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $800 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-36

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Saudi Arabia

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 0 million
Other	$800 million
TOTAL	$800 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** upgrade kits and services for 54 C-130E/H aircraft. The Avionics Modernization Program upgrade includes navigation and communications equipment, LCD displays with a heads-up display, software development/integration, associated support equipment, modification kits, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support.

(iv) **Military Department:** Air Force (QDD)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 27 SEP 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia - Upgrade Services of C-130E/H Aircraft

The Government of Saudi Arabia has requested a possible sale of upgrade kits and services for 54 C-130E/H aircraft. The Avionics Modernization Program upgrade includes navigation and communications equipment, LCD displays with a heads-up display, software development/integration, associated support equipment, modification kits, spare and repair parts, test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics support. The estimated cost is $800 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

Saudi Arabia desires the ability to operate in civil airspace in compliance with current requirements. The C-130E/H system requires upgrades to radar, navigation and communication systems, as well as the man-machine interface. The aircraft will be used in the normal, day-to-day operations of the existing C-130 fleet within the Air Traffic Control environment. Saudi Arabia will have no difficulty absorbing the upgraded aircraft into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

For planning purposes, the prime contractor will be the Boeing Company of Long Beach, California. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of up to 18 U.S. Government and contractor representatives for one-week intervals twice annually to participate in training, program management and technical review. The number of U.S. Government personnel and contractor representatives required in-country to support the C-130 Avionics Modernization Program will be determined in joint negotiations as the program proceeds through the assessment and installation phases.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–19899 Filed 10–4–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–30 with attached transmittal and policy justification, and Sensitivity of Technology.

Dated: September 29, 2005.

L.M. Bynum,

OSD Federal Register Liaison Officer Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

28 SEP 2005
In reply refer to:
I-05/006514

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-30, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Chile for defense articles and services estimated to cost $50 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Chile

(ii) **Total Estimated Value:**

Major Defense Equipment*	$42 million
Other	$ 8 million
TOTAL	$50 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 20 RGM-84L HARPOON Block II missiles; containers; training devices; spare and repair parts; supply/technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support.

(iv) **Military Department:** Navy (AFJ)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 28 SEP 2005

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Chile - HARPOON Block II Missiles

The Government of Chile has requested a possible sale of 20 RGM-84L HARPOON Block II missiles; containers; training devices; spare and repair parts; supply/technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support The estimated cost is $50 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in South America.

Chile intends to use the HARPOON missile to maintain the Anti-Ship Warfare capability of its frigates purchased from the Royal Netherlands Navy. The RGM-84 HARPOON Block II upgraded targeting capability significantly reduces the risk of hitting non-combatant targets thus improving Chile's naval operational flexibility. The missiles will assist the Chilean Navy to develop and enhance standardization and operational ability with the United States. Chile will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be The Boeing Company of St. Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Chile permanently. There may be U.S. Government or contractor personnel in-country on a temporary basis in conjunction with program technical and management oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-30

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The HARPOON Block II AGM, RGM, or UGM-84L missiles are air, ship, and submarine launched Anti-Surface Warfare missiles that provide naval forces with capabilities to engage targets in both the "blue water" regions and the littorals of the world. Only the ship-launched missile variant is associated with this proposed sale. The RGM-84L Block II HARPOON missile, including publications, documentation, operations, supply, maintenance, and training is Confidential.

2. The RGM-84L incorporates components, software, and technical design information that are considered sensitive. The following HARPOON components being conveyed by the proposed sale that are considered sensitive and are classified Confidential include:

a. Radar seeker
b. Global Positioning System/Inertial Navigation System (GPS/INS)
c. Operational Flight Program (OFP) software
d. Missile operational characteristics and performance data

These elements are essential to the ability of the HARPOON missile to selectively engage hostile targets under a wide range of operational, tactical, and environmental conditions.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–19901 Filed 10–4–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held October 24, 2005, from 10 a.m. to 12 p.m.

ADDRESSES: The meeting will be in room 3M60/70 in the GAO building located at 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4750; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. The duties of the Council include soliciting, reviewing, and evaluating project proposals, and submitting to the Secretary of the Army a prioritized list of projects recommended for construction.

Agenda topics will include review and ranking of project proposals to be recommended for potential funding under the Estuary Habitat Restoration Program, update on the National Estuary Restoration Inventory, reports on the dialogue session at the CZ05 meeting, an interagency developmental assignment and status of ongoing projects.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m., October 20, 2005. We cannot guarantee access for requests received after that time. Please contact Ellen Cummings to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the ''G'' Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10 a.m. will be escorted to the meeting. Those who are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–19955 Filed 10–4–05; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 5, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 29, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Federal Stafford Loan Master Promissory Note.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 2,959,380.

Burden Hours: 2,219,535.

Abstract: The Federal Stafford Loan Master Promissory Note is the means by which an eligible student borrower promises to repay a Federal Stafford Loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2898. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–19963 Filed 10–4–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Public Hearing

AGENCY: National Assessment Governing Board; Education

SUMMARY: The National Assessment Governing Board is announcing a public hearing on October 25, 2005 to obtain comment on the draft 2009 Science Framework for the National Assessment of Educational Progress (NAEP). Public and private parties and organizations are invited to present written and/or oral testimony. The forum will be held at the Phoenix Park Hotel, 520 North Capitol Street, NW., Washington, DC from 9:30 a.m. to 3 p.m. Eastern Standard Time.

Background: Under Public Law 107–279, the Governing board is responsible for determining the content and methodology of NAEP assessments. The Board also has responsibility for developing ''a process for review of the [NAEP] assessment, which includes the active participation of teachers, curriculum specialists, local school board administrators, parents, and concerned members of the public.'' The draft framework is the result of a comprehensive process involving participants from all these groups.

The framework, subject to approval by the Governing Board, describes the content and format for a new NAEP science assessment to be administered beginning in 2009 at grades 4, 8, and 12.

The frame work covers a broad range of scientific content and practices in Physical, Life, and Earth/Space sciences. It was developed by panels of educators, scientists, and interested members of the public through a widely-inclusive process.

The draft framework is available on the Web site of the Governing Board at *http://www.nagb.org.* Other related material on the Governing Board and the National Assessment may be found at this Web site and at *http://nces.ed.gov/nationsreportcard.*

The Board is seeking comment from policymakers, science educators, researchers, state and local school administrators, assessment specialists, parents of children in elementary and secondary schools, and interested members of the public. Representatives of the National Assessment Governing Board will conduct the hearing to receive testimony, and may ask clarifying questions or respond to presentations. Oral presentations should not exceed ten minutes. Testimony will become part of the public record.

All views will be considered by the Governing Board Committee when it takes final action on the NAEP 2009 Science Framework, which is anticipated in November 2005.

To register to present oral testimony on October 25, 2005 at the Phoenix Park Hotel, please call Tessa Regis, of the NAGB staff, at (202) 357–7500 or send an e-mail to *tessa.regis@ed.gov* by Friday, October 21. Written testimony should be sent by mail, fax or e-mail for receipt in the Board office by October 26.

Testimony should be sent to:

National Assessment Governing Board, 800 North Capitol Street, NW.—Suite 825, Washington, DC 20002, Attn: Mary Crovo, Fax: (202) 357–6945, E-mail: *mary.crovo@ed.gov.*

For further information, please contact Charles Smith or Mary Crovo at (202) 357–6938.

This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at (202) 357–6938 or at *munira.mwalimu@ed.gov* no later than October 17, 2005. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to set policy for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, planning and executing the initial public release of NAEP reports, and developing guidelines for reporting and disseminating results.

Summaries of the forum, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. eastern standard time.

Dated: September 30, 2005.

Munira Mwalimu,

Operations Officer, National Assessment Governing Board.

[FR Doc. 05–19957 Filed 10–4–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Proposed Floodplain and Wetlands Involvement for the Mesaba Energy Project Integrated Gasification Combined Cycle (IGCC) Demonstration Plant Northern Minnesota Iron Range, Itasca County, MN

AGENCY: Department of Energy.

ACTION: Notice of intent and notice of proposed floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality NEPA regulations (40 Code of Federal Regulations [CFR] parts 1500–1508), and the DOE NEPA regulations (10 CFR part 1021) to assess the potential environmental impacts of a project proposed by Excelsior Energy Inc. (Excelsior), to design, construct, and operate (potentially under an agreement with an operating company) a coal-based, Integrated Gasification Combined Cycle (IGCC) electric generating facility on the Iron Range of northern Minnesota (hereafter termed the ''Mesaba Energy Project'' or the ''Project''). The proposed Project, selected for further consideration under DOE's Clean Coal Power Initiative competitive solicitation, would demonstrate advanced technologies to produce electricity via the IGCC process, including advanced gasification and air separation systems, feedstock flexibility, improved environmental performance, and improved thermal efficiency. The Project would represent the first phase of a proposed two-phase generating station, each phase of which would nominally generate 600 megawatts of electricity (MWe) for export to the electrical grid. The EIS will consider the impacts of both phases, even though DOE's potential funding would only be provided in support of phase one. The EIS will evaluate the proposed Project and reasonable alternatives. Because the proposed Project may affect floodplains and wetlands on the Iron Range of

northern Minnesota, the EIS will include a floodplain and wetlands assessment, and DOE will prepare a statement of findings in accordance with DOE regulations for Compliance with Floodplain and Wetlands Environmental Review Requirements (10 CFR part 1022). Wetland permitting and mitigation would be conducted in accordance with the rules and policies of Section 404 of the Clean Water Act and under the Minnesota Wetland Conservation Act.

The EIS will help DOE decide whether to provide approximately $36 million in cost-shared funding (the estimated total Project cost is $1.97 billion). DOE may also provide a loan guarantee, pursuant to the Energy Policy Act of 2005, to guarantee a portion of the private sector financing for the Project.

The purpose of this Notice of Intent is to inform the public about the proposed Project; invite public participation in the EIS process; announce the plans for a public scoping meeting; explain the EIS scoping process; and solicit public comments for consideration in establishing the proposed scope of the EIS. Because the proposed facility is considered a Large Electric Power Generating Plant, the Project is subject to the Minnesota Power Plant Siting Act (Minnesota Statutes 116C.51–.69), which requires the preparation of a state-equivalent EIS. The EIS requirements under NEPA and the Minnesota Power Plant Siting Act are substantially similar, and it is DOE's intent to prepare, in cooperation with the Minnesota Department of Commerce and the Minnesota Public Utilities Commission, an EIS that will fulfill the requirements of both laws.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope of the EIS from all interested parties. Comments must be received by November 14, 2005, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone (see **ADDRESSES** below), DOE will conduct two public scoping meetings in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of alternatives and environmental issues to be considered in the EIS. The scoping meetings will be held at the Taconite Community Center, 26 Haynes Street, Taconite, MN, on Tuesday, October 25, 2005, beginning at 7 p.m., and at Hoyt Lakes Arena, 106 Kennedy Memorial Drive, Hoyt Lakes, MN, on Wednesday, October 26, 2005, beginning at 7 p.m. (see ''Public Scoping Process below.'') The public is invited to an informal session at each location beginning at 4 p.m. on the date of each meeting during which DOE personnel will be present to discuss the proposed Project and the EIS process. Displays and other forms of information about the proposed agency action and the demonstration plant will be made available to the public for review.

ADDRESSES: Written comments on the proposed EIS scope and requests to participate in the public scoping meeting should be addressed to the NEPA Document Manager for the Project: Mr. Richard Hargis, M/S 922–342C, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA 15236–0940. Individuals who would like to otherwise participate in the public scoping process should contact Mr. Richard Hargis directly by telephone: 412–386–6065; toll free number: 888–322–7436 ext. 6065; fax: 412–386–4775; or electronic mail: *richard.hargis@netl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding the Mesaba Energy Project or to receive a copy of the draft EIS for review when it is issued, contact Mr. Richard Hargis as described above. Those seeking general information on the DOE NEPA process should contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; Telephone: (202) 586–4600, Facsimile: (202) 586–7031 or leave a toll-free message at: 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action: Since the early 1970's, DOE and its predecessor agencies have supported research and development programs that include long-term, high-risk activities for the development of a wide variety of innovative coal technologies through the proof-of-concept stage. However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure continued development and subsequent commercialization. Before any technology can be considered seriously for commercialization, it must first be demonstrated. The financial risk associated with technology demonstration is, in general, too high for the private sector to assume in the absence of strong incentives. Congress established the Clean Coal Power Initiative (CCPI) in 2002 as a government/industry partnership to implement the President's National Energy Policy (NEP) recommendation to increase investment in clean coal technology and reduce the use of imported energy sources. That recommendation addresses a national challenge of ensuring the reliability of electric supply while simultaneously protecting the environment.

The goal of the CCPI program is to accelerate commercial deployment of advanced coal technologies that provide the United States with clean, reliable, and affordable energy. Through cooperative agreements established pursuant to the CCPI program, DOE would accelerate deployment of innovative technologies to: meet near-term energy and environmental goals; reduce technological risk to the business community to an acceptable level; and provide private sector incentives required for continued activity in innovative research and development directed at providing solutions to long-range energy supply problems.

Proposed Action: The proposed action is for DOE to provide, through a cooperative agreement with Excelsior, and possibly through a loan guarantee for up to 80% of the total Project cost, financial assistance for the proposed Project. The proposed IGCC demonstration plant would be designed for long-term commercial operation following completion of an anticipated 12-month minimum demonstration period under a cooperative agreement with DOE. The Project would cost a total of approximately $1.97 billion; DOE's share would be approximately $36 million. The Project would represent the first phase of a proposed two-phase generating station; each phase would nominally generate 600 MWe (net) for a nominal combined generating capacity of 1,200 MWe (net). DOE plans to complete the EIS within 15 months following publication of this Notice of Intent and, subsequently, to issue a Record of Decision. The EIS will consider the impacts of both phases, even though DOE s potential funding would only be provided in support of phase one.

The Project would use ConocoPhillips' E-Gas™ Technology for solid feedstock gasification. The starting point for the project design is the 262 MWe (net) Wabash River Coal Gasification Repowering Project (Wabash) in Terre Haute, Indiana, which was built under the DOE's Clean Coal Technology Program (predecessor to the CCPI) and has been in operation since 1995. Wabash has achieved an emissions profile that compares favorably to alternative technologies being proposed and permitted today for

new coal-based power projects. Based on subsequent DOE-funded studies of potential performance and technological upgrades, and nearly 1,600 design and operational lessons learned from Wabash, the E-Gas™ team identified five areas for continued research and development to improve and advance gasification technologies toward commercial acceptance. The areas address improvements in operational availability, capital costs and financing, operating costs, feedstock flexibility, and environmental performance.

Based in part on the achievements and lessons learned from Wabash, the Mesaba Energy Project directly addresses the principal barriers hindering IGCC penetration into the power market. The Project would integrate numerous design improvements that would substantially advance the original Wabash technology, design, and systems integration. The Project would demonstrate the following features and technologies to improve and advance IGCC processes toward commercial acceptance:

• Increased Capacity—With more than double the generating capacity of Wabash, the Project would demonstrate the economies of scale attainable at larger commercial operations. When complete, the installed cost is expected to be 30% lower per kilowatt than a plant based on the original Wabash design.

• Advanced Gasifier—The Project would demonstrate a significantly more advanced full-slurry quench, multiple-train gasifier system. Two gasifiers would be operated simultaneously to supply two combustion turbines and one steam turbine, each coupled directly to its own generator. One or more additional or redundant gasifiers would be included to help ensure an operational availability of about 90% or better.

• Air Separation Unit (ASU)—The Project would be the first IGCC plant in the U.S. designed to demonstrate a configuration to extract bleed air from the combustion turbine to reduce the parasitic load of the main air compressor in the ASU, increasing net plant output and reducing capital cost. Nitrogen extracted from air entering the ASU would be recycled for injection into the combustion turbine to reduce formation of nitrogen oxides by reducing the flame temperature of the combustor and the time that combustion gases remain at elevated temperatures.

• Feedstock Flexibility—The Project would demonstrate greater feedstock flexibility with the capability of gasifying bituminous coal (Illinois No. 6), sub-bituminous coal (Powder River Basin), blends of sub-bituminous coal and petroleum coke, and/or other combinations of these feedstocks.

• Improved Environmental Performance—The Project is intended to improve upon Wabash by deploying processes and technologies that would make it among the cleanest coal-based power generating plant in the world. Emission levels for criteria pollutants (sulfur dioxide, nitrogen oxides, carbon monoxide, volatile organic compounds, and particulate matter) and mercury are expected to be equal to or below those of the lowest emission rates for utility-scale, coal-based generation fueled by similar feedstocks. In addition, carbon dioxide emissions are expected to be 15 to 20% lower than the current average for U.S. coal-based power plants fueled by similar feedstocks.

• Thermal Efficiency—With a design heat rate of about 8,600 Btu/kilowatt-hour when using bituminous coal, Mesaba would demonstrate a significant heat rate improvement over Wabash.

From a broad perspective, the Project would demonstrate the commercial development, engineering, and design necessary to construct a large feedstock-flexible reference plant for IGCC and thus establish a standard replicable design configuration complete with installed cost information for future commercialization. Major components of the Project would include feedstock acceptance and storage; slurry preparation; oxygen preparation via the ASU; feedstock gasification and slag handling; synthesis gas preparation (*i.e.*, particulate matter removal, char re-injection, water scrubbing, acid gas removal, and mercury removal); sulfur recovery; synthesis gas combustion (using nitrogen dilution to reduce formation of nitrogen oxides) with concomitant electricity production (using combustion turbine generators); and electricity production via heat recovery (using steam turbine generators).

The ConocoPhillips E-Gas™ gasification technology utilizes a slurry-fed, two-stage gasifier to convert carbonaceous feedstock to a synthesis gas (syngas) and a vitrified, inert slag. The first stage is operated at an elevated temperature using oxygen and feedstock-water slurry to drive off volatile matter from the feedstock and facilitate the removal of its mineral content as a molten slag. The first stage also produces a raw, hot syngas that requires cooling and cleaning before being used as fuel gas to generate power in the gas turbines. The second stage provides the initial cooling of the hot syngas by quenching it with slurry, without using any additional oxygen. The thermal heat of the hot syngas from the first stage volatilizes the slurry fed to the second stage and converts that portion of the feedstock to additional syngas.

The two-stage gasifier, coupled with E-Gas™ unique application of a firetube syngas cooler design, minimizes the size and temperature level requirements for the high temperature heat recovery system, which is cost-effective and yields high conversion efficiencies. Raw synthesis gas exiting the gasifier contains entrained solids that are removed and recycled to the first stage of the gasifier. Recycling of these solids also enhances efficiency and consolidates the solid effluent from the process into one stream as slag leaving the gasifier. Sulfur in the initial feedstock is recovered in the process as a molten liquid and sold as a byproduct. The process yields a desulfurized syngas that can be used as a fuel gas for power generation in advanced combustion turbines.

Excelsior plans to construct the Mesaba Generating Station in two phases, of which the Project would represent the first phase. Plant start-up, system and feedstock testing, and long-term performance and reliability demonstration for the Project would require approximately one year, after which the plant could continue in commercial operation. A minimum 12-month demonstration period is planned to begin in 2011.

Alternatives: NEPA requires that agencies evaluate reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives. Congress established the CCPI Program to help implement the President's NEP recommendation to increase investment in clean coal technology by addressing national challenges of ensuring the reliability of domestic electric and energy supplies while simultaneously protecting the environment. The Program was structured to achieve NEP goals by promoting private sector initiatives to invest in demonstrations of advanced technologies that could be widely deployed commercially to ensure that the United States has clean, reliable, and affordable energy.

Private sector investments and deployment of energy systems in the United States place DOE in a more limited role than if the Federal Government were the owner and operator of the energy systems. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the

system. However, in dealing with applicants under the CCPI solicitation, the scope of alternatives is necessarily more restrictive, because DOE must focus on alternative ways to accomplish its purpose and need, which reflects both the application before it and the functions that DOE plays in the decision process. Moreover, under the CCPI Program, DOE's role is limited to approving or disapproving the project as proposed by the applicant. Therefore, the only alternative to the proposed action, other than the alternative site discussed below, is the no-action alternative.

Alternatives considered by Excelsior in developing the Project will be presented in the EIS. Legislation enacted by the State of Minnesota in 2003 provides the Project an exemption from obtaining a Certificate of Need (see Minn. Stat. 216B.1694 Subd. 2 (a)(1)), but also requires the Project to be located in the Taconite Tax Relief Area (in northeastern Minnesota) [(at Minnesota Statutes 216B.1694 Sub. 1(3))]. Therefore, the range of sites considered by Excelsior will necessarily be limited to a plant located within the Taconite Tax Relief Area of Minnesota.

Excelsior is proposing a preferred and alternative site for the proposed Project. The preferred site is the West Range site, which is located just north of the city of Taconite in Itasca County, Minnesota. The East Range site is the alternative site, and is located about one mile north of the city of Hoyt Lakes in St. Louis County, Minnesota. In the case of the West Range site, the Project's generating facilities would connect to the power grid via new and existing high voltage transmission line (HVTL) corridors to a substation near the unincorporated community of Blackberry; in the case of the East Range site, the generating facilities would connect to the grid via existing HVTL corridors that lead to a substation near the unincorporated community of Forbes. Excelsior would reconstruct and/or reinforce the HVTL infrastructure within the final corridors selected. In conjunction with both phases of the Project, Excelsior anticipates that network reinforcements would be required within other existing HVTL corridors leading to load centers and/or at substations down-network of the existing substations identified. In addition to these siting and transmission alternatives, the EIS also would analyze alternatives for feedstocks and feedstock blends; access to the facility and means of transport (road and rail) for feedstocks, byproducts, and wastes; water sources; wastewater disposal; and connection to existing natural gas pipelines.

Both sites are fairly remote wooded areas, with access to water supplies, rail and highway transportation, natural gas pipelines and high-voltage transmission lines. At either site, construction of the proposed facilities would require approximately 85 acres for the IGCC complex associated with the Project; an identical amount of land would be required for the Phase II facilities. Since both sites are ''greenfield'' sites, development of infrastructure at either site would include railroad spurs, plant road construction, water pipelines, natural gas pipelines and upgrades to high voltage transmission lines. A major difference between the sites is that the West Range site lies outside the Lake Superior Basin Watershed.

Construction of the proposed Project potentially would affect jurisdictional wetlands located within the West Range or East Range sites and their associated transportation/utility corridors. Approximately 300 acres of wetlands are located within the boundary of the 1,260 acres of property currently optioned for the West Range Site. Additional wetlands exist within transportation and utility corridors located outside the optioned property and through which project-related infrastructure must traverse on route to this site. Construction and operation of the proposed Project at the West Range site potentially would result in long-term impacts to wetlands within the optioned property and these transportation/utility corridors; construction of buried and overhead utilities could result in temporary construction impacts to additional wetlands therein. Approximately 300 acres of wetlands are located within the boundary of the approximately 825 acres of property currently identified for the East Range Site. The potential for wetland impacts from facility construction and operation on the East Range Site is similar to those identified for the West Range Site. No floodplain areas are located on the West Range or East Range sites, but construction of surface, buried, and overhead utilities will traverse the floodplain areas of several rivers and streams. Wetland impact avoidance, minimization and other mitigation will be described in accordance with Section 404 of the Clean Water Act and the Minnesota Wetland Conservation Act. The final EIS will include a floodplain and wetlands assessment and a statement of findings in accordance with DOE regulations for Compliance with Floodplain and Wetlands Environmental Review Requirements (10 CFR part 1022).

Under the no-action alternative, DOE would not provide partial funding for the final engineering, construction, and operation of the plant. In the absence of DOE funding, the sponsor may still construct the Project, but it might not demonstrate all features as proposed for CCPI Program support.

Preliminary Identification of Environmental Issues: The following environmental issues have been tentatively identified for analysis in the EIS. This list, which was developed from reviews of the proposed technology and of the scope of the Project and similar projects, and which is presented to facilitate public comment on the planned scope of the EIS, is neither intended to be all inclusive nor a pre-determined set of potential impacts. Additions to or deletions from this list may occur as a result of the public scoping process. The environmental issues include:

1. Atmospheric resources: Potential air quality impacts resulting from emissions during construction and operation of the Project, including potential impacts on Class I areas in the vicinity (Voyageurs National Park and Boundary Waters Canoe Area Wilderness) and local odor impacts.

2. Water resources: Potential impacts on surface and groundwater resources and water quality, including effects of water usage, wastewater management, storm water management, and soil erosion and sedimentation in the Mississippi River and Great Lakes Basins.

3. Cultural resources: Including potential effects on historic and archaeological resources and Native American tribal resources.

4. Ecological resources: Potential onsite and offsite impacts to vegetation, wildlife, protected species, and ecologically sensitive habitats.

5. Floodplains and Wetlands: Including potential impacts on wetlands located within the East Range and West Range sites and their associated transportation/utility corridors, and potential impacts on floodplains within the transportation/utility corridors for both sites. In accordance with DOE regulations (10 CFR part 1022), the final EIS will include a floodplain and/or wetlands assessment and a statement of findings.

6. Terrestrial resources: Land requirements and compatibility of plant facilities and operations, access roads, rail alignments, and potential new corridors for HVTL and natural gas lines with adjacent and surrounding land uses.

7. Utility and transportation infrastructure requirements for delivery

of feedstocks and process chemicals to the facility.

8. Health and safety impacts, including construction-related safety and process-related safety associated with handling and management of process chemicals.

9. Noise: Potential impacts resulting from construction and operation of the proposed plant and from transportation of feedstocks, process materials, and plant byproducts.

10. Community resources: Potential impacts on local traffic patterns, socioeconomic impacts of plant construction and operation, including effects on public services and infrastructure resulting from the influx of construction personnel and plant operating staff, and environmental justice issues.

11. Aesthetic and scenic resources: Potential visual effects associated with plant structures and operations.

12. Cumulative effects that result from the incremental impacts of the proposed plant when added to the other past, present, and reasonably foreseeable future activities in the Iron Range area.

13. Connected actions, including the effects of construction and operation of the second phase of the Mesaba Generating Station resulting in a combined, nominal 1,200 MWe (net) power generating facility on the selected site.

Public Scoping Process: To ensure that all issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will end on November 14, 2005. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and potential impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should identify specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues for analysis. Written, e-mailed, faxed, or recorded comments should be communicated by November 14, 2005 (See **ADDRESSES**).

DOE will conduct public scoping meetings at the Taconite Community Center, 26 Haynes Street, Taconite, MN, on Tuesday, October 25, 2005, beginning at 7 p.m., and at Hoyt Lakes Arena, 106 Kennedy Memorial Drive, Hoyt Lakes, MN on Wednesday, October 26, 2005, and beginning at 7 p.m. In addition, the public is invited to an informal session at each location beginning at 4 p.m. on the date of each meeting to learn more about the proposed action. Displays and other information about the proposed agency action and the demonstration plant will be available, and DOE personnel will be present to discuss the proposed action and the NEPA process.

DOE requests those who wish to speak at either public scoping meeting to contact Mr. Richard Hargis, either by phone, fax, e-mail, or in writing (See **ADDRESSES** above). Attendees wishing to speak, but who have not requested to do so in advance, may register at the meeting and will be provided opportunities to speak following previously scheduled speakers. Speakers who may need more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five minutes initially but will provide additional opportunity as time permits. Speakers may also provide written materials to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin each meeting with an overview of the proposed Project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands their comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, on this 29th day of September, 2005.

John Spitaleri Shaw,

Assistant Secretary for Environment, Safety and Health.

[FR Doc. 05–19972 Filed 10–4–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 29, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–2310–003.
Applicants: Crescent Ridge LLC.
Description: Crescent Ridge LLC submits an amendment to its market-based rate tariff in compliance with Commission Order issued 6/7/05.
Filed Date: 09/22/2005.
Accession Number: 20050926–0043.
Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

Docket Numbers: ER03–1101–010.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection LLC submits the fourth of four six-month reports on the effects of its credit policy for virtual bidders as required by Commission Orders issued 9/22/03 and 12/20/04.
Filed Date: 09/22/2005.
Accession Number: 20050926–0044.
Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

Docket Numbers: ER04–435–016.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6, in compliance with Commission Order issued 7/1/05.
Filed Date: 09/23/2005
Accession Number: 20050927–0042
Comment Date: 5 p.m. eastern time on Friday, October 14, 2005.

Docket Numbers: ER05–1085–001; ER04–458–008
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revision to Attachment AA (Compensation & Cost Recovery for Actions During Emergency Condition) of the Open Access Transmission & Energy Market Tariff, Third Revised Volume No. 1.
Filed Date: 09/23/2005
Accession Number: 20050927–0028
Comment Date: 5 p.m. eastern time on Friday, October 14, 2005.

Docket Numbers: ER05–1308–001
Applicants: New England Power Company
Description: New England Power Co submits an amendment to its 8/9/05 interconnection & support agreement with Massachusetts Electric Co & the Town of Marblehead Municipal Light Dept.
Filed Date: 09/23/2005
Accession Number: 20050927–0025
Comment Date: 5 p.m. eastern time on Friday, October 14, 2005.

Docket Numbers: ER05–1451–001
Applicants: Southwestern Public Service Company
Description: Southwestern Public Service Co submits an amended Notice of Cancellation of the SPS Rate Schedule FERC No. 108, Agreement for Wholesale Full Requirements Electric Power Service entered on 11/14/89.
Filed Date: 09/22/2005
Accession Number: 20050926–0042
Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

Docket Numbers: ER05–1498–000

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an Interconnection and Operating Agreement among Velva Windfarm LLC, Midwest ISO, and Northern States Power Company dba Xcel Energy.

Filed Date: 09/22/2005

Accession Number: 20050923–0369

Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

Docket Numbers: ER05–1499–000

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits a Facilities Construction Agreement among Velva Windfarm LLC, Midwest ISO, and Great River Energy.

Filed Date: 09/22/2005

Accession Number: 20050923–0368

Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

Docket Numbers: ER05–1500–000

Applicants: Public Service Company of New Mexico

Description: Public Service Co of New Mexico submits a Funding Agreement for Certain Design, Engineering and Construction Services, dated 9/9/05 with Tri-State Generation and Transmission Cooperative, Inc and PNM.

Filed Date: 09/22/2005

Accession Number: 20050923–0367

Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

Docket Numbers: ER05–1501–000

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp submits a Simplified and Reorganized ISO Tariff pursuant to section 205 of the Federal Power Act.

Filed Date: 09/22/2005

Accession Number: 20050926–0201

Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

Docket Numbers: ER05–1502–000

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corp submits an amendment to the CAISO Tariff (Amendment 72) pursuant to section 205 of the Federal Power Act under ER05–1502.

Filed Date: 09/22/2005

Accession Number: 20050926–0046

Comment Date: 5 p.m. eastern time on Thursday, October 13, 2005.

Docket Numbers: ER05–1503–000

Applicants: Wheelabrator North Andover, Inc.

Description: Wheelabrator North Andover, Inc, successor in interest to Massachusetts Refusetech, Inc, submits a notice of cancellation of MRI's electric tariff, Rate Schedule FERC No. 1.

Filed Date: 09/23/2005

Accession Number: 20050927–0026

Comment Date: 5 p.m. eastern time on Friday, October 14, 2005

Docket Numbers: ER05–1504–000

Applicants: Indianapolis Power & Light Company

Description: Indianapolis Power & Light Co submits a notice of cancellation of Service Agreement 33 under its OATT, FERC Electric Tariff, Original Volume No. 1.

Filed Date: 09/23/2005

Accession Number: 20050927–0038

Comment Date: 5 p.m. eastern time on Friday, October 14, 2005.

Docket Numbers: ER05–1505–000; ER04–1157–000

Applicants: Buckeye Power Generating, LLC

Description: Buckeye Power Generating, LLC advises FERC that due to amendments to section 201(f) of the Federal Power Act, it is no longer a public utility.

Filed Date: 09/23/2005

Accession Number: 20050927–0039

Comment Date: 5 p.m. eastern time on Friday, October 14, 2005.

Docket Numbers: ER05–1506–000

Applicants: American Transmission Company, LLC; Midwest Independent Transmission System Operator, Inc.

Description: American Transmission Company, LLC and Midwest ISO submit revised tariff sheet with a proposed change to the Midwest ISO's Open Access Transmission & Energy Market Tariff, FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: 09/23/2005

Accession Number: 20050927–0040

Comment Date: 5 p.m. eastern time on Friday, October 14, 2005.

Docket Numbers: ER05–1507–000

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Market Administration & Control Area Services Tariff.

Filed Date: 09/23/2005

Accession Number: 20050927–0041

Comment Date: 5 p.m. eastern time on Friday, October 14, 2005.

Docket Numbers: ER99–2156–005

Applicants: Cordova Energy Company LLC

Description: Cordova Energy Co, LLC submits revised market-based tariff in compliance with Commission Letter Order issued 9/14/05.

Filed Date: 09/23/2005

Accession Number: 20050927–0027

Comment Date: 5 p.m. eastern time on Friday, October 14, 2005.

Docket Numbers: ER99–3151–005

Applicants: Public Service Electric & Gas Company

Description: PSEG Energy Resources & Trade LLC submit a Notice of Change in Status with regard to the representations upon which FERC relied in granting market-base rate authority.

Filed Date: 09/22/2005

Accession Number: 20050923–0360

Comment Date: 5 p.m. eastern time on Thursday, October 13, 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 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5445 Filed 10–4–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0135; FRL–7980–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting for the Performance-Based Qualification of Test Methods for Diesel Fuel (Renewal), EPA ICR Number 2180.02, OMB Control Number 2060–0566

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing, approved ''emergency'' collection. This ICR is scheduled to expire on September 30, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 4, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2005–0135, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), EPA West, Room B102, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, Attorney/Advisor, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–343–9623, fax number: 202–343–2901; e-mail address: *pastorkovich.anne-marie@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 13, 2005 (70 *FR* 40327), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on the notice.

EPA has established a public docket for this ICR under Docket ID No. OAR–2005–0135 which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Recordkeeping and Reporting for the Performance-Based Qualification of Test Methods for Diesel Fuel (Renewal).

Abstract: With this information collection request (ICR), we are seeking permission to continue to collect applications from refiners, importers, and independent laboratories in order to permit them to use performance-based test methods for measuring sulfur in diesel fuel and detecting the presence of a marker in diesel sold as heating oil.

In the past, we would set up a designated test method for measuring compliance with various fuel parameters. Typically, this test method was an American Society for Testing and Materials (ASTM) procedure that our laboratory used. Regulated parties would have to use the same method. In certain circumstances, alternative test methods were named. If a regulated party used an alternative test method, all results would have to be correlated to the designated test method. Simply put, the party would have to develop and apply a correlation equation to all test method. Simply put, the party would have to develop and apply a correlation equal to all its results to bring them in line with the designated test method.

The recent regulations for nonroad diesel fuel incorporated a performance-based test method approach. See ''Air Pollution Control; New Motor Vehicles and Engines: Nonroad Diesel Engines and Fuel; Emissions Standards,'' 69 *FR* 38957 (June 29, 2004). This approach sets up accuracy and precision criteria, but permits regulated parties to qualify their laboratories to use their own test methods. Industry supports this approach and welcomes it as a first step to a more comprehensive performance-based approach to test method issues. In order to be qualified to use a test method, a refiner's or importer's laboratory or an independent laboratory will have to submit certain information to us. Unfortunately, these reporting provisions were not included in the information collection request for the nonroad diesel final rule. The first day by which regulated parties may comply was December 27, 2004 and many were waiting to submit applications, so an emergency ICR request was submitted to OMB, to permit EPA to accept applications through September 30, 2005. This notice announces a proposed information request that would permit us to continue to accept applications after that date.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 180 hours per response. 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.

Respondents/Affected Entities (listed with SIC Code/2002 NAICS Code): Refiners (2911/324110), importers (5172/424720) and laboratories (8734/541380).

Estimated Number of Respondents: 225.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 46,500.

Estimated Total Annual Cost: $3,023,000, which includes $0 annualized capital/startup costs, $0 O&M costs, and $3,023,000 annual labor costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: September 27, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–20004 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0257; FRL–7739–8]

Computer Sciences Corporation and Systems Integration Group; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide relatedinformation submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Computer Sciences Corporation and its subcontractor, Systems Integration Group, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Computer Sciences Corporation and its subcontractor, Systems Integration Group, have been awarded a contract to perform work for OPP, and access to this information will enable Computer Sciences Corporation and its subcontractor, Systems Integration Group, to fulfill the obligations of the contract.

DATES: Computer Sciences Corporation and its subcontractor, Systems Integration Group, will be given access to this information on or before October 11, 2005.

FOR FURTHER INFORMATION CONTACT: Patsy Garnett, FIFRA Security Officer, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5455; e-mail address: *garnett.patsy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under**FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other RelatedInformation?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0257. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be availableelectronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Contractor Requirements

Under Contract No. DW–47–93939301–0, Computer Sciences Corporation and its subcontractor, Systems Integration Group, will perform various document management functions to examine, categorize, handle and format OPP information, which will be in both electronic and paper copy. The contractor will be working with applications for pesticide registration, supporting studies and other technical documents of archival significance.

The OPP has determined that access by Computer Sciences Corporation and its subcontractor, Systems Integration Group, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Computer Sciences Corporation and its subcontractor, Systems Integration Group, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information

from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Computer Sciences Corporation and its Systems Integration Group, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Computer Sciences Corporation and its subcontractor, Systems Integration Group, until the requirements in this document have been fully satisfied. Records of information provided to Computer Sciences Corporation and its subcontractor, Systems Integration Group, will be maintained by EPA Project Officers for this contract. All information supplied to Computer Sciences Corporation and its subcontractor, Systems Integration Group, by EPA for use in connection with this contract will be returned to EPA when ComputerSciences Corporation and its subcontractor, Systems Integration Group, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: September 22, 2005.

Robert Forrest,

Acting Director, Information Technology and Resource Management Division, Office of Pesticide Programs.

[FR Doc. 05–20007 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0001; FRL–7741–2]

National Pollution Prevention and Toxics Advisory Committee (NPPTAC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S. App.2 (Public Law 92–463), EPA gives notice of a 2–day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the meeting is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution, Prevention and Toxics (OPPT).

DATES: The meeting will be held on October 13, 2005 from 8 a.m. to 4:45 p.m., and October 14, 2005 from 9:30 a.m.to 3:30 p.m.

Registration to attend the meeting identified by docket identification (ID) number OPPT–2002–0001, must be received on or before October 7, 2005. Registration will also be accepted at the meeting.

Request to provide oral comments at the meeting, identified as (NPPTAC) October, 2005 meeting, must be received in writing on or before October 7, 2005.

Request to participate in the meeting, identified by docket identification (ID) number OPPT–2002–0001, must be received on or before October 7, 2005.

For information on access or services for individuals with disabilities, please contact John Alter at (202) 564–9891 or *npptac.oppt@epa.gov.* To request accommodation of a disability, please contact John Alter, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Meetings of the 5 Work Groups of the Committee will take place as follows. The High Production Volume (HPV) Work Group will meet on October 12, 2005, from 2 p.m. to 3:45 p.m., to discuss activities related to EPA's HPV Challenge Program. The Pollution Prevention (P2) Work Group will meet on October 12, 2005 from 8 a.m. to noon, to discuss activities related to EPA's Pollution Programs. The Tribal Issues Work Group will meet on October 12, 2005 from 2 p.m. to 5:30 p.m., to discuss activities related to EPA's coordination with Tribes and Tribal Organizations. The Broader Issues Work Group will meet on October 12, 2005 from 2 p.m to 5 p.m, to discuss activities related to EPA's New Chemicals and Existing Chemicals Programs. The Interim Ad Hoc Work Group on Nanoscale Materials will meet on October 12, 2005 from 4 p.m. to 5:30 p.m., to discuss issues regarding a potential voluntary pilot reporting program for nanoscale materials that are existing chemical substances and associated issues related to the regulations of nanoscale materials that are new chemical substances.

ADDRESSES: The meeting will be held at the Sheraton Crystal City 1800 Jefferson Davis Highway Arlington, VA.

Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: John Alter, (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address:*npptac.oppt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individual groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPPT–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number OPPT–2002–0001, include NPPTAC October 2005 meeting in the subject line on the first page of your comment.

1. *By mail:* OPPT Document Control Office, Environmental Protection Agency, 7407M, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0001.

2. *Electronically:* At *http://www.epa.gov/edocket/,* search for OPPT–2002–0001, and follow the directions to submit comments.

3. *Hand delivery/courier:* OPPT Document Control Office in EPA East Bldg., Rm. M6428, 1201 Constitution Ave., NW, Washington DC.

II. Background

The proposed agenda for the NPPTAC meeting includes: The High Production (HPV) Volume Challenge Program; Pollution Prevention; Risk Assessment; Risk Management; Risk Communication; Nanoscale Material and Coordination with Tribes and other Stakeholders. The meeting is open to the public.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number OPPT–2002–0001, must be received on or before October 5, 2005.

For information on access or services for individuals with disabilities, please contact John Alter at (202) 564–9891 or *npptac.oppt@epa.gov.* To request accommodation of a disability, please contact John Alter, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

List of Subjects

Environmental protection, NPPTAC, pollution prevention, toxics, toxic chemicals, chemical health and safety, and nanoscale materials.

Dated: September 29, 2005.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 05–20006 Filed 10–4–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 20, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 5, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0207.

Title: Part 11—Emergency Alert System (EAS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 22,000 respondents; 1,188,761 responses.

Estimated Time Per Response: .017 hours–40 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 22,068 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Part 11 contains rules and regulations providing for an EAS. The EAS provides the President with the capability to provide immediate communications and information to the general public at the national, state, and local area level during periods of national emergency. The EAS also provides state and local governments and the National Weather Service with the capability to provide immediate communications and information to the general public concerning emergency situations posting a threat to life and property.

Part 11 describes the required technical standards and operational procedures of the EAS for AM, FM, and TV broadcast stations, cable systems, wireless cable systems and other participating entities and includes recordkeeping and reporting requirements.

This information is used by FCC staff as part of routine inspections of broadcast stations. Accurate recordkeeping of this data is vital in determining the location and nature of possible equipment failure on the part

of the transmitting or receiving entity. Furthermore, since the national level EAS is solely for the President's use, its proper operation must be assured.This information collection is being revised by eliminating the one-time requirement to purchase a computer chip to voluntarily update the event and location codes. This requirement was approved by the Office of Management and Budget (OMB) on 1/21/03. After this 60 day comment period, the Commission will submit a Request for OMB Review (OMB 83i submission) to obtain approval of this revised collection.

OMB Control No.: 3060–0645.

Title: Section 17.4, Antenna Registration.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 25,600.

Estimated Time Per Response: .25–1.2 hours (average).

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 40,329 hours.

Total Annual Cost: $3,200,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) must register the structure with the Commission. This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. Structure owners are required to provide specific information under Part 17. The data is used by FCC staff during investigations related to air safety or radio frequency interference.

After the 60 day comment period has ended, the Commission will submit a Request for OMB Review (OMB 83i submission) to obtain approval of this extended (no change in requirements) collection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–19520 Filed 10–4–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 21, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 5, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0550.

Title: Local Franchising Authority Certification.

Form Number: FCC Form 328.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or Tribal government.

Number of Respondents: 20.

Estimated Time per Response: 30 minutes.

Frequency of Response: One time reporting requirement; third party disclosure requirement.

Total Annual Burden: 10 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On May 3, 1993, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket No. 92–266, FCC 93–177. Among other things, the Report and Order implemented Section 3(a) of the Cable Television Consumer and Protection and Competition Act of 1992 wherein a local franchise authority (LFA) must file with the Commission, a written certification when it seeks to regulate basic service cable rates. Subsequently, the Commission developed FCC Form 328 to provide a standardized, simple form for LFAs' to use when requesting certification. The data derived from FCC 328 filings is used by Commission staff to ensure that an LFA has met the criteria specified in Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 for regulating basic service rates.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–19521 Filed 10–4–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 26, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction

Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 5, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0061.

Title: Annual Report of Cable Television Systems.

Form Number: FCC Form 325.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,150.

Estimated Time per Response: 2 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 2,300 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC uses FCC Form 325, Annual Report of Cable Television to solicit basic operational information from a sample of cable systems nationwide. The operational information includes the operator's name and address, system-wide capacity and frequency information, channel usage, and number of subscribers. Operators of every operational cable television system are required to complete the form to verify, correct and/or furnish the Commission with the most current information on their respective cable systems.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–19657 Filed 10–4–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 26, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 5, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer's Act.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 848.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 125,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries and consumers would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the Grade B signal strength tests will be used to indicate whether consumers are ''unserved'' by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–19661 Filed 10–4–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

September 28, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 4, 2005. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.* If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1070.

Title: Allocations and Service Rules for 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local and tribal government.

Number of Respondents: 1,000.

Estimated Time Per Response: 0.5 hours—1.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 12,000 hours.

Total Annual Cost: $1,830,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission adopted a Memorandum Opinion and Order, WT Docket No. 02–146, FCC 05–45, which revises the rules to require licensees, as part of the link registration process, to submit to the Database Manager (DM) an analysis under the interference protection criteria for the 70–80 GHz bands that demonstrates that the proposed link will neither cause nor receive harmful interference relative to previously registered non-government links. This requirement will apply to link registrations (new or modified) that are first submitted to a database manager on or after the effective date of this new requirement. The database managers will accept all interference analyses submitted during the link registration process and retain them electronically for subsequent review by the public. It is important for the ''first-in-time'' determination, and for adjudicating complaints filed with the Commission, that the interference analysis captures the exact snapshot in time (*i.e.*, conditions at the time-of-link registration) that will be dispositive in a dispute. Without the benefit of an interference analysis on file, it would be much more difficult for registrants to recreate conditions accurately after the fact.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–19991 Filed 10–4–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 05–2349]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (Bureau) gives notice of Mr. Ronald R. Morrett's debarment from the schools and libraries universal service support mechanism (or ''E-Rate program'') for a period of three years.

DATES: Debarment commences on the date Mr. Weaver receives the debarment letter or October 5, 2005, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau has debarred Mr. Morrett from the schools and libraries universal service support mechanism for a period of three year pursuant to 47 CFR parts 521 and 47 CFR 0.111(a)(14). The Commission previously suspended Mr. Morrett from the schools and libraries mechanism, pending debarment proceedings. See 70 FR 40360, July 13, 2005. Attached is the debarment letter, Notice of Debarment, DA 05–2349, which was mailed to Mr. Morrett and released on August 30, 2005, that in turn attached the suspension letter, *Notice of Suspension and of Proposed Debarment*, DA 05–1729. The complete text of the debarment letter, including attachment 1 the suspension letter, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete test is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

William H. Davenport,

Chief, Investigations and Hearings Division, Enforcement Bureau.

The notice of debarment and suspension letters follow:

August 30, 2005.

[DA 05–2349]

Via Certified Mail

Return Receipt Requested

Mr. Ronald R. Morrett, Jr., 1809 Holly Drive, Harrisburg, PA 17110.

Re: Notice of Debarment, File No. EB–03–IH–0615

Dear Mr. Morrett:

Pursuant to § 54.521 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E-Rate program'') for a period of three years.[1]

On June 23, 2005, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Proposed Debarment (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the **Federal Register** on July 13, 2005.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for your proposed debarment, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, on or about May 16, 2005, you were convicted based on your guilty plea to a felony information charging you with conspiracy to corruptly give, offer, and agree to give things of value with the intent to influence an agent of the Harrisburg (Pennsylvania) School District, in violation of 18 U.S.C. 371.[6] You pled guilty to conspiring with John H. Weaver and others to make and subsequently making kick-back payments of more than $1.9 million to Weaver while he, as Information Technology Officer of the district, processed work-completed certifications that were essential to you in obtaining E-Rate payments under the multi-million dollar E-Rate contract awarded by the district to your company, EMO Communications, Inc.[7] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under § 54.521(c) of the Commission's rules.[8] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, *i.e.*, the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[9] Debarment excludes you, for the debarment period, from activities ''associated with or related to the schools and libraries support mechanism,'' including ''the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.''[10]

Sincerely,

William H. Davenport
Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Brian Perry, Esq., Nealson & Gover, Kristy Carroll, Esq., USAC (E-mail), Marty Carlson, Esq., Assistant United States Attorney, Middle District of Pennsylvania (E-mail).

June 23, 2005.

[DA 05–1729]

Via Certified Mail

Return Receipt Requested

Mr. Ronald R. Morrett, Jr., 1809 Holly Drive, Harrisburg, PA 17110.

Re: Notice of Suspension and of Proposed Debarment File No. EB–03–IH–0615

Dear Mr. Morrett:

The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your May 16, 2005 conviction for conspiracy to engage in bribery in a federally funded program, in violation of 18 U.S.C. 371.[11] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the schools and libraries universal service support mechanism (or ''E-Rate program''). In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[12]

I. Notice of Suspension

Pursuant to § 54.521(a)(4) of the Commission's rules,[13] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries support mechanism, including the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[14] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[15]

Suspension is immediate pending the Bureau's final debarment determination. You may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[16] Such requests, however, will not ordinarily be granted.[17] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[18] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[19]

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[1] See 47 CFR 0.111(a)(14), 54.521.

[2] Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Ronald R. Morrett, Jr., Notice of Suspension and Proposed Debarment, 20 FCC Rcd 10888 (Inv. & Hearings Div., Enf. Bur. 2005) (Attachment 1).

[3] 70 FR 40360 (July 13, 2005).

[4] See Notice of Suspension, 20 FCC Rcd at 10888–91.

[5] See 47 CFR 54.521(e)(3) and (4). That date occurred no later than August 12, 2005. See supra note 3.

[6] Notice of Suspension, 20 FCC Rcd at 10888–90 (''Morrett Plea Agreement''); *United States* v. *Morrett,* Criminal Docket No. 03–337, Judgment (M.D.Pa. filed May 16, 2005 and entered May 18, 2005).

[7] Notice of Suspension, 20 FCC Rcd at 10889–90.

[8] Id. at 10890; 47 CFR 54.521(c).

[9] See Notice of Suspension, 20 FCC Rcd at 10890.

[10] See 47 CFR 54.521(a)(1), 54.521(a)(5), 54.521(d); Notice of Suspension, 20 FCC Rcd at 10890–91.

[11] Any further reference in this letter to ''your conviction'' refers to your December 8, 2003 guilty plea for conspiracy and conviction therefor. *See United States* v. *Morrett*, Criminal Docket No. 03–337, Information at 4 (M.D.Pa. filed December 8, 2003) (''Morrett Information''); *United States* v. *Morrett,* Criminal Docket No. 03–337, Plea Agreement at 1–2 (M.D.Pa. filed Dec. 8, 2003)

[12] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[13] 47 CFR 54.521(a)(4). See Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225–9227, ¶¶ 67–74 (2003) (''Second Report and Order'').

[14] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[15] Second Report and Order, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[16] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[17] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70.

[18] 47 CFR 54.521(f).

[19] See Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

II. Notice of Proposed Debarment

A. Reasons for and Cause of Debarment

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[20] As provided by your December 8, 2003 plea agreement upon which your conviction is based, you pleaded guilty to a felony information charging you with conspiracy in violation of 18 U.S.C. 371.[21] The felony information alleges that in 2000, the Harrisburg (Pennsylvania) School District awarded a multi-million dollar E-Rate contract to you and EMO Communications, Inc. (''EMO'') for the development and installation of an educational technology system for the school district; that a grant from the E-Rate program funded a substantial portion of the cost of this contract; that you and EMO received payments from the E-Rate program only after John Weaver, Information Technology Director for the school district, certified that you and EMO had performed specified work under the contract; and that you agreed to make kickback payments of more than $1.9 million to Weaver while he processed certifications that were essential to you in obtaining E-Rate funded payments on the contract.[22] The felony information charges you, Weaver, and others with conspiring to corruptly give, offer, and agree to give things of value with the intent to influence an agent of the Harrisburg School District and in furtherance of that conspiracy, causing more than $1.9 million in payments to be made to Weaver.[23] Pursuant to your plea agreement, you have pleaded guilty to the charge of conspiracy set forth in the felony information. These actions constitute the conduct or transactions upon which this debarment proceeding is based.[24] Moreover, your conviction on the basis of these acts falls within the categories of causes for debarment defined in § 54.521(c) of the Commission's rules.[25] Therefore, pursuant to § 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

B. Debarment Procedures

You may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[26] Absent extraordinary circumstances, the Bureau will debar you.[27] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[28] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[29]

C. Effect of Debarment

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for at least three years from the date of debarment.[30] The Bureau may, if necessary to protect the public interest, extend the debarment period.[31]

Please direct any responses to the following address:

Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4C–330, 445 12th Street, SW., Washington, DC 20554.

If you submit your response via hand-delivery or non-United States Postal Service delivery (*e.g.*, Federal Express, DHL, etc.), please send the response to Ms. Lee at the following address: Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, MD 20743.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Eric Bash by telephone at (202) 418–1420 and by e-mail at *eric.bash@fcc.gov.*

Sincerely yours,
William H. Davenport,
Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Brian Perry, Esq., Nealson & Gover,Kristy Carroll, Esq., USAC (E-mail),Marty Carlson, Esq., Assistant United States Attorney, Middle District of Pennsylvania, (E-mail).

[FR Doc. 05–19989 Filed 10–4–05; 8:45 am]

BILLING CODE 6712–01–P

[20] Second Report and Order, 18 FCC Rcd at 9225, ¶ 66.

[21] See Morrett Plea Agreement at 1.

[22] Morrett Information at 2–3.

[23] Morrett Information at 4–5.

[24] Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i).

[25] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section (47 CFR 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[26] See Second Report and Order, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2(i), 54.521(e)(3).

[27] Second Report and Order, 18 FCC Rcd at 9227, ¶ 74.

[28] See Id., 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[29] Id. The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[30] Second Report and Order, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[31] Id.

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the second meeting of the Technological Advisory Council (''Council'') under its charter renewed as of November 19, 2004.

DATES: October 27, 2005 at 10 a.m. to 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418–1096 (voice), (202) 418–2989 (TTY), or email: *Jeffery.Goldthorp@fcc.gov.*

SUPPLEMENTARY INFORMATION: Increasing innovation and rapid advances in technology have accelerated changes in the ways that telecommunications services are provided to, and accessed by, users of communications services. The Federal Communications Commission must remain abreast of new developments in technologies and related communications to fulfill its responsibilities under the Communications Act. At this third meeting under the Council's new charter, the Council will consider ways that emerging technologies can improve communications resiliency. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance,

however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *Jeffery.Goldthorp@fcc.gov.* Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–19992 Filed 10–4–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:45 a.m. on Thursday, October 6, 2005, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, supervisory and personnel activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: September 29, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E5–5439 Filed 10–4–05; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011223–031.

Title: Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; CMA CGM, S.A.; COSCO Container Lines Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes P&O Nedlloyd B.V. and P&O Nedlloyd Limited as parties to the agreement.

Agreement No.: 011223–032.

Title: Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; CMA CGM, S.A.; COSCO Container Lines Ltd.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment modifies the agreement's provisions regarding the rights and obligations of a withdrawing party.

Agreement No.: 011324–017.

Title: Transpacific Space Utilization Agreement.

Parties: American President Lines Ltd.; APL Co. Pte Ltd.; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Westwood Shipping Lines; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes P&O Nedlloyd B.V. and P&O Nedlloyd Limited as parties to the agreement.

Agreement No.: 011325–033.

Title: Westbound Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; China Shipping Container Lines Co., Ltd.; COSCO Container Lines Company Limited; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Line GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes P&O Nedlloyd B.V. and P&O Nedlloyd Limited as parties to the agreement.

Agreement No.: 011325–034.

Title: Westbound Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; China Shipping Container Lines Co., Ltd.; COSCO Container Lines Company Limited; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Line GmbH; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha Line; Orient Overseas Container Line Limited; and Yangming Marine Transport Corp.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment modifies the agreement's provisions regarding the rights and obligations of a withdrawing party.

Agreement No.: 011409–012.

Title: Transpacific Carrier Services, Inc. Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; Evergreen Marine Corporation (Taiwan), Ltd.; Hanjin Shipping Co., Ltd.; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; COSCO Container Lines Co., Ltd.; CMA CGM, S.A.; and China Shipping Container Lines Co., Ltd.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes P&O Nedlloyd B.V. and P&O Nedlloyd Limited as parties to the agreement.

Agreement No.: 011870–001.

Title: Indian Subcontinent Discussion Agreement.

Parties: Evergreen Marine Corp. (Taiwan) Ltd., Hapag-Lloyd Container Linie GmbH, and Nippon Yusen Kaisha.

Filing Party: David F. Smith, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment removes P&O Nedlloyd B.V. and P&O Nedlloyd Limited as parties to the agreement.

By order of the Federal Maritime Commission.

Dated: September 30, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–20012 Filed 10–4–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 App. U.S.C. 817 (d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American Cruise Lines, Inc., One Marine Park, Haddam, CT 06438, Vessel: AMERICAN SPIRIT.

Carnival Corporation (d/b/a Carnival and Carnival Cruise Line), 3655 NW 87th Avenue, Miami, FL 33178, Vessel: CARNIVAL LIBERTY.

Costa Crociere S.p.A. and Costa Cruise Lines N.V., Venture Corporate Center II, 200 South Park Road, Suite 200, Hollywood, FL 33021–8541, Vessel: COSTA MAGICA.

NCL (Bahamas) Ltd. and Norwegian Jewel Ltd., 7665 Corporate Center Drive, Miami, FL 33126, Vessel: NORWEGIAN JEWEL.

NCL (Bahamas) Ltd. and Pride of America Ship Holding, Inc., 7665 Corporate Center Drive, Miami, FL 33126, Vessel: PRIDE OF AMERICA.

Princess Cruise Lines, Ltd., 24305 Town Center Drive, Santa Clarita, CA 91355, Vessel: SEA PRINCESS.

Princess Cruise Lines, Ltd., and Carnival PLC, 24305 Town Center Drive, Santa Clarita, CA 91355, Vessel: PACIFIC PRINCESS and TAHITIAN PRINCESS.

Saga Shipping Company, Ltd., Saga Cruises Ltd., Saga Holidays Limited, Saffron Maritime/Columbia Ship Management, Magsaysay Maritime Corporation, Saga Group, Saga Holdings Ltd., The Saga Building, Enbrook Park, Folkestone, Kent CT20 3SE, Vessel: SAGA RUBY.

Dated: September 30, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–20010 Filed 10–4–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passenger for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 App. U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Costa Crociere S.p.A. and Costa Cruise Lines N.V., Venture Corporate Center II, 200 South Park Road, Suite 200, Hollywood, FL 33021–8541. *Vessel:* COSTA MAGICA.

NCL (Bahamas) Ltd. d/b/a NCL, 7665 Corporate Center Drive, Miami, FL 33126. *Vessel:* NORWEGIAN JEWEL, PRIDE OF AMERICA.

Princess Cruise Lines, Ltd. and Carnival PLC, 24305 Town Center Drive, Santa Clarita, CA 91355. *Vessel:* CROWN PRINCESS, TAHITIAN PRINCESS, SEA PRINCESS.

Royal Caribbean Cruises Ltd. (d/b/a Royal Caribbean International), 1050 Caribbean Way, Miami, FL 33132–2096. *Vessel:* FREEDOM OF THE SEAS.

Dated: September 30, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–20011 Filed 10–4–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 018946NF.
Name: AMF Global Transportation, Inc.
Address: 1630 Jarvis Avenue, Elk Grove Village, IL 60007.
Date Revoked: September 21, 2005.
Reason: Failed to maintain valid bonds.

License Number: 016913F.
Name: America's Cargo Logistics, L.L.C.
Address: 50 Carnation Avenue, Floral Park, NY 11001.
Date Revoked: September 3, 2003.
Reason: Surrendered license voluntarily.

License Number: 017466N.
Name: Compass Shipping, Inc.
Address: 525 Empire Blvd., Brooklyn, NY 11225.
Date Revoked: September 21, 2005.
Reason: Failed to maintain a valid bond.

License Number: 019041N.
Name: Grupo Delpa Corp.
Address: 7225 NW 25th Street, Suite 311, Miami, FL 33122.
Date Revoked: September 21, 2005.
Reason: Failed to maintain a valid bond.

License Number: 012190N.
Name: Reliable Overseas Shipping & Trading, Inc.
Address: 239–241 Kingston Avenue, Brooklyn, NY 11213.
Date Revoked: September 21, 2005.
Reason: Failed to maintain a valid bond.

License Number: 003028F
Name: Total Ex-Port of Florida, Inc.
Address: c/o Total Port Clearance Inc., 10 Fifth Street, Valley Stream, NY 11581.
Date Revoked: September 12, 2005.
Reason: Surrendered license voluntarily.

License Number: 015634N.
Name: Trans-America Maritime, Inc.
Address: 8345 NW 74th Street, Miami, FL 33166–2325.
Date Revoked: September 8, 2005.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–20013 Filed 10–4–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
001833F	Commodity Forwarders, Inc., 11101 South La Cienega Blvd., Los Angeles, CA 90045.	September 5, 2005.
003296F	Consuelo E. Kelly dba, Kelly International, 10257 Switzer, Overland Park, KS 66212.	August 26, 2005.
017663N	Data Cargo Co., Inc., 8757 NW 35 lane, Miami, FL 33172.	February 12, 2005.
018332N	Pioneer Logistics, Inc., 2300 Higgins Road, Suite 204, Elk Grove Village, IL 60007.	August 25, 2005.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 05–20014 Filed 10–4–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 018765N.

Name: PR Logistics Corporation.

Address: Hato Tejas Industrial Park, Street C, Lot #6, Hato Tejas, Bayamon, PR 00950.

Order Published: FR: 10/25/05 (Volume 70, No. 164, Pg. 49922).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–20009 Filed 10–4–05; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 20, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Mason Young Garrett and Mary Beth Garrett, both of Belton, South Carolina; to acquire voting shares of GrandSouth Bancorporation, Greenville, South Carolina, and thereby indirectly acquire voting shares of GrandSouth Bank, Greenville, South Carolina.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Brian K. James, individually and as trustee of the James Educational Trust, Destin, Florida; to acquire voting shares of Bonifay Holding Company, and thereby indirectly acquire voting shares of The Bank of Bonifay, both of Bonifay, Florida.

Board of Governors of the Federal Reserve System, September 30, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5446 Filed 10–4–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Magyar Bancorp, MHC, and Magyar Bancorp, Inc., both of New Brunswick, New Jersey; to become bank holding companies by acquiring 100 percent of the voting shares of Magyar Bank, New Brunswick, New Jersey.

Board of Governors of the Federal Reserve System, September 30, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5447 Filed 10–4–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time: 10 a.m.

Date: October 14, 2005.

Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC.

Status: Open.

Matters To Be Considered:

1. Approval of the minutes of the May 4, 2005, meeting.
2. Report of the Executive Director on Thrift Savings Plan status.
3. L Funds.
4. Investment consultant.
5. Hurricane Katrina.
6. New business.

For further information contact: Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: September 29, 2005.

Elizabeth S. Woodruff,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 05–19909 Filed 10–4–05; 8:45 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

Federal Travel Regulation; Notice of GSA Bulletin FTR 05–07

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of a bulletin.

SUMMARY: This notice announces GSA Federal Travel Regulation (FTR) Bulletin 05–07. This Bulletin informs agencies that certain provisions of the FTR governing the authorization of actual subsistence expenses for official travel (both TDY and relocation) are temporarily waived as a result of Hurricane Rita, because it is expected that finding lodging facilities and/or adequate meals may be difficult, and distances involved may be great resulting in increased costs for per diem expenses. Bulletin FTR 05–07 may be found at *www.gsa.gov/ftrbulletins*.

DATES: The bulletin announced in this notice is effective September 24, 2005.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact General Services Administration, Office of Governmentwide Policy, Office of Travel, Transportation and Asset Management, at (202) 501–1777. Please cite Bulletin FTR05–07.

SUPPLEMENTARY INFORMATION:

A. Background

As a result of the catastrophic destruction caused by Hurricane Rita, GSA is announcing GSA Bulletin FTR 05–07. Agencies should consider delaying all non-essential TDY and relocation to the affected locations for a period of 90 days. This is especially important with relocation travel because the 120-day maximum for TQSE cannot be extended due to statutory restrictions. While in the past, GSA has limited application of such waivers to Presidentially Declared Disaster Areas, in the case of Hurricane Rita, the widespread devastation coupled with the extensive evacuation of urban areas means that we cannot effectively determine the extent to which the ability to secure lodgings will be compromised. In this case, we are stating that each agency may determine whether Bulletin FTR 05–07 applies to travel which is impacted by Hurricane Rita.

B. Procedures

Bulletins regarding Federal travel expenses are located on the Internet at *www.gsa.gov/ftrbulletins* as Federal Travel Regulation (FTR) bulletins.

Dated: September 29, 2005.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. 05–19973 Filed 10–4–05; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families; Award Announcement

AGENCY: Administration on Children, Youth and Families.

ACTION: Award announcement.

SUMMARY: The Administration on Children, Youth and Families, Child Care Bureau, herein announces an urgent grant award to the South Plains Community Action Association, Inc. (fiscal agent) on behalf of the South Plains Early Childhood Council (Local Council and Grantee), Levelland, Texas, in the amount of $99,999 for a project period of 12 months. This urgent grant award will assist the Local Council in the emergency provision of child care and early learning opportunities to young children and their families who have been evacuated from Mississippi, Louisiana, and other parts of Texas due to Hurricane Katrina. This service area includes 13,575 square miles of the following counties: Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry, and Yoakum.

The South Plains Early Childhood Council is well-situated geographically to provide the needed emergency services, and is well-equipped in terms of program activities and cooperating agencies to add immediately and significantly to the child care and related service needs of the evacuee families. The Council is unique in that it serves such a large multi-county rural area that is receiving evacuees and because it has the existing organizational capacity to take the services directly to the rural communities using the FROG bus [Fun Reading on the Go]. This is especially important since the majority of evacuees have no personal form of transportation and public transportation is limited in this rural area.

This emergency grant award will provide early learning opportunities, early literacy activities, and mental health support to children under the age of five years, their parents/guardians, caregivers, and child care providers. Young children currently residing in shelters will be given age- and culturally-appropriate books and will receive supplemental supportive educational and social activities from staff trained in early childhood. Young children and their parents/guardians will also be provided with mental health supports by appropriately trained staff to support the children's social and emotional development, and to promote effective parenting.

FOR FURTHER INFORMATION CONTACT: Carol Gage, ELOA Project Officer, at (202) 690–6243.

SUPPLEMENTARY INFORMATION: This award will be made pursuant to Pub. L. 106–554, Early Learning Opportunities Act.

Dated: September 27, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 05–19911 Filed 10–4–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Public Comment on the Proposed Adoption of ANA Program Policies and Procedures

AGENCY: Administration for Native Americans (ANA).

SUMMARY: Pursuant to section 814 of the Native American Programs Act of 1974 (the Act) as amended by 42 U.S.C. 2991b–1, ANA herein describes its proposed interpretive rules, general statement of policy and rules of agency procedure or practice in relation to the Social and Economic Development Strategies (SEDS), Native Language Preservation and Maintenance (hereinafter referred to as Native Language), Environmental Regulatory Enhancement (hereinafter referred to as Environmental) and Environmental Mitigation (hereinafter referred to as Mitigation) programs and any Special Initiatives. Under the statute, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, statements of general policy and rules of agency procedure or practice and to give notice of the final adoption of such changes at least thirty (30) days before the changes become effective. The notice also provides additional information about ANA's plan for administering the programs.

DATES: The deadline for receipt of comments is thirty (30) days from date of publication in the **Federal Register**.

ADDRESSES: Comments in response to this notice should be addressed to Sheila K. Cooper, Director of Program Operations, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop: Aerospace 8-West, Washington, DC 20447. Delays may occur in mail delivery to Federal offices; therefore, a copy of comments should be faxed to: (202) 690–7441. Comments will be available for inspection by members of the public at the Administration for Native Americans, Aerospace Center, 901 D Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Sheila K. Cooper, Director of Program Operations, toll-free at (877) 922–9262.

SUPPLEMENTARY INFORMATION: Section 814 of the Native American Programs Act of 1974, as amended, requires ANA to provide notice of its proposed interpretive rules, statements of policy and rules of agency organization, procedure or practice. These proposed clarifications, modifications and new text will appear in the ANA FY06 Program Announcements (PAs): SEDS, Native Language, Environmental, Mitigation and SEDS Special Initiatives. This notice serves to fulfill this requirement.

Additional Information:

I. Environmental Regulatory Enhancement

ANA Evaluation Criteria

Project Approach: In an effort to adhere to the Congressional intent of the legislation and to clarify the program purpose that has historically prompted numerous questions and created application and project development inconsistencies, ANA will now request the following information from applicants to be addressed within the ANA evaluation criterion:

Applicants are required to describe a land base or other resource, *i.e.*, river or body of water, over which they exercise jurisdiction to implement Tribal regulation of environmental quality.

II. Definitions

The following definition will be used in the appropriate program-specific FY06 PAs. ANA has clarified many areas that applicants have historically found difficult to understand and that have previously prompted numerous questions and created application and project development inconsistencies. The ANA PAs will now include an additional definition for the following term:

Logic Model: A logic model is a systematic and visual way to present and share your understanding of the relationships among the resources you have to operate your program, the activities you plan and the changes or results you hope to achieve.

III. Impact Monitoring

Section 811(a)(1) of the Act requires that the Commissioner provide for the evaluation of projects assisted under this title, including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals, their impact on related programs and their structure and mechanisms for delivery of services. Section 811 (a) 2 of the Act requires that ANA evaluate projects awarded under the Act not less frequently than once every third year. ANA will consider (1) geographic location; (2) grant award amount; and (3) length of project period, when selecting projects for evaluation. Grantees will be given a notification of ANA's intent to review thirty (30) days prior to the on-site evaluation. Evaluations shall be conducted by persons not directly involved in the administration of the project evaluated.

In FY03 ANA began a process to enhance its capacity to conduct program monitoring and evaluation. This process allows ANA to monitor the completion of applicant project goals, effective use of Federal funds, and the applicant's success in accomplishing its project mission. The process includes improving ANA's capacity through enhanced information technology systems to track performance-based indicators such as jobs, project outcomes and community impacts. Each applicant for ANA funding must propose a stand-alone project that will be completed or self-sustained by the end of the grant term, and must have measurable results. (*See* Notice of Public Comment on the Proposed Adoption of ANA Program Policies and Procedures: 68 FR 64686; November 14, 2003.)

Performance indicators have been introduced as application criteria and are measurement descriptions used to identify outcomes or results of the project. Outcomes or results must be measurable to determine that the project achieved its desired objective and can be independently verified through monitoring and evaluation. (Legal authority: Sections 803(a) and (d) and 803C of the Native American Programs Act of 1974 as amended by 42 U.S.C. 2991b and 2991b–3. (See Notice of Public Comment on the Adoption of Impact Indicators: 70 FR 6686 February 8, 2005.)

In addition, ANA Training and Technical Assistance (T/TA) providers will be performing on-site technical assistance visits for those grantees identified as potentially at-risk for project implementation.

IV. Training and Technical Assistance On-Site Activity

45 CFR 74.51(g) and 92.40(e) allow Department of Health and Human Services staff or representatives to conduct on-site monitoring of grantees as warranted by program needs. Based on the authority provided, on-site monitoring and evaluation is necessary to determine if the amount awarded is a productive and effective use of funds and serves the community's needs. When determined as appropriate, ANA's T/TA providers will conduct an on-site visit to validate progress and outcomes proposed by the grantee to ensure project integrity and to offer technical assistance and guidance to support project activities. Such instances when an on-site visit is deemed appropriate are: non-

submission or untimely progress reporting; delayed start in project implementation; inconsistent Federal funds draw-downs in relation to approved work plan; or other grant/project management concerns.

In the case of a multi-year grant, this activity will help ANA determine if continued funding is justified. In addition, 45 CFR 1336.40 requires that progress reports and continuation applications from ANA grantees contain sufficient information for ANA to determine the extent to which the recipient satisfies ANA project evaluation standards. Sufficient information means information adequate to enable ANA to compare the recipient's accomplishments with the goals and activities of the grantee's approved work plan and with ANA project evaluation criteria. Grantees identified as potentially at-risk for project implementation will receive an on-site visit by one of ANA's T/TA providers. In collaboration, the T/TA provider and the grantee will identify challenges or barriers to the project and develop a plan to bring the project into compliance with its approved Objective Work Plan. On-site visits shall be conducted by persons not directly involved in the administration of the project.

V. Electronic Application Submission

Pursuant to the Federal Financial Assistance Management Improvement Act (Pub. L. 106–107), HHS is improving the efficiency and coordination of its grant-making processes by participating in the Federal Government's Grant Streamlining Initiative. For all FY06 competitions, ANA will participate in the Grants.gov process, which allows applicants the opportunity to submit applications electronically. Applicants are not required to submit electronically and can still submit hard copy applications. The applicant is responsible for ensuring on-time electronic submission is fully achieved. The following activities and application submission requirements will become effective in FY06:

- ANA will no longer publish PAs in the **Federal Register**. Official ANA PAs will be posted on the Grants.gov Web site. PAs will also be posted on the ANA Web site and on the ANA T/TA providers' Web sites.
- Due to limitations on the number of times the Objective Work Plan form can be replicated within the Grants.gov system, applicants will be limited to no more than six (6) project objectives per budget period. This limitation applies to all applicants regardless of type of submission format: Hard copy or electronic submission.

VI. Environmental Mitigation

ANA received pass-through funds from the Department of Defense for Tribal and Tribal organizations to offset the effects of military actions at Formerly Used Defense Sites (FUDS). ANA will announce the availability of these funds in FY06. A request for financial assistance in this program area does not require a non-Federal share match requirement.

VII. SEDS Special Initiatives

ANA has the discretionary authority to make awards in support of special initiatives, including but not limited to, healthy marriage and relationships, fatherhood, positive youth development and emergency support to Native communities affected by man-made or natural disasters. In FY06, ANA will announce the availability of funding for special initiatives when practicable. A request for financial assistance for any of the special initiatives will require a non-Federal share match requirement.

VIII. Post Award Training

ANA, through contracted services, conducts regional post award training. Past practice has been to provide funding to new grantees for attendance at this training in order to provide additional assistance and information on managing a Federal award. In FY06, ANA will require all applicants to include in their Federal budget request the costs associated for the proposed project's finance person and the project manager to attend this regional training. It is determined that due to many reasons, largely grantee staff turnover, every grantee receiving an ANA award will benefit from the information provided at post award training, and therefore the expense is considered reasonable for all applicants to include in their budget request and also reflect in the activity in their Objective Work Plans.

IX. ANA Administrative Policy

The following policy will be used in all FY06 PAs. ANA has clarified many areas that applicants have historically found difficult to understand and that have previously prompted numerous questions and created application and project development inconsistencies. The ANA PAs will now include this clarified policy:

- If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An applicant's governing board will be considered representative of the community to be served if the applicant demonstrates that at least a majority of the board individuals fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; (3) have experience working with the community to be served by the project; or (4) have a cultural relationship with the community be to served.

Dated: September 28, 2005.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 05–19908 Filed 10–4–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0218]

Vision 2006—A Conversation With the American Public; Notice of Public Meetings on Specific Food and Drug Administration Issues; Notice of Cancellation of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling a series of three public meetings entitled ''Vision 2006—A Conversation With the American Public.'' These meetings were to be a forum where consumers could interact directly with FDA's leadership to discuss issues of public interest. These meetings were announced in the **Federal Register** of August 16, 2005 (70 FR 48160).

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Food and Drug Administration (HF–23), 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587, FAX: 301–827–4774, e-mail: *philip.chao@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 16, 2005, we announced a series of public meetings entitled ''Vision 2006—A Conversation with the American Public.'' These meetings were to be held in three cities (Miami, FL; Boston, MA; and Phoenix, AZ), and they were to be an open forum where consumers could interact with FDA's leadership. The meetings were also to be an opportunity for us to

update the public on current agency programs, engage the public in discussions, and obtain consumer input on specific issues.

We initially scheduled the meetings to occur on the following dates: September 13, 2005, in Miami, FL; November 2, 2005, in Boston, MA; and on November 30, 2005, in Phoenix, AZ. However, due to our need to focus on relief efforts associated with Hurricane Katrina, we postponed the Miami, FL meeting indefinitely (70 FR 53798, September 12, 2005).

Through this notice, we regret to announce that we are canceling all three meetings at this time. Additionally, we will contact individuals who had registered for these meetings to inform them about the cancellation.

Dated: September 29, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–19956 Filed 10–4–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2005–22219]

Northeast Gateway Energy Bridge, L.L.C., Liquefied Natural Gas Deepwater Port License Application; Preparation of Environmental Impact Statement

AGENCY: Coast Guard, DHS; Maritime Administration, DOT.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce that the Coast Guard intends to prepare an environmental impact statement (EIS) as part of the environmental review of this license application. The application describes a project that would be located in Massachusetts Bay, in Block 125, approximately 13 miles south-southeast of Gloucester, MA. Publication of this notice begins a scoping process that will help identify and determine the scope of environmental issues to be addressed in the EIS. This notice requests public participation in the scoping process and provides information on how to participate in the process.

DATES: A public meeting will be held in Boston, MA on October 18, 2005. There will also be a public meeting in Gloucester, MA on October 19, 2005. Both meetings will be from 6 p.m. to 8 p.m. and will be preceded by an informational open house from 4:30 p.m. to 6 p.m. The public meetings may end later than the stated time, depending on the number of persons wishing to speak. Material submitted in response to the request for comments for the scoping process must reach the Docket Management Facility by October 31, 2005.

ADDRESSES: The public meeting in Boston will be held at Faneuil Hall, 1 Faneuil Hall Square, Boston, MA, telephone: 617–635–4100. The public meeting in Gloucester will be at The Elks at Bass Rocks, 101 Atlantic Road, Gloucester, MA, telephone: 978–282–3200.

Address docket submissions for USCG–2005–22219 to: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone number is 202–366–9329, its fax number is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Roddy Bachman, U.S. Coast Guard, telephone: 202–267–1752, e-mail: *rbachman@comdt.uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We invite you to learn about the proposed deepwater port at an informational open house, and to comment at a public meeting on environmental issues related to the proposed deepwater port. Your comments will help us identify and refine the scope of the environmental issues to be addressed in the EIS.

In order to allow everyone a chance to speak at the public meeting, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket.

Public docket materials will be made available to the public on the Docket Management Facility's Docket Management System (DMS). See ''Request for Comments'' for information about DMS and your rights under the Privacy Act.

All our public meeting locations are wheelchair-accessible. If you plan to attend the open house or public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on environmental issues related to the proposed deepwater port. The public meeting is not the only opportunity you have to comment. In addition to or in place of attending a meeting, you can submit comments to the Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2005–22219.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Submit comments or material using only one of the following methods:

- Electronic submission to DMS, *http://dms.dot.gov.*
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the DMS Web site (*http://dms.dot.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the DMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Docket Management Facility (see **ADDRESSES**), or electronically on the DMS Web site.

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, and the receipt of the current application for a liquefied natural gas (LNG) deepwater port appears at 70 FR 52422, September 2, 2005. The ''Summary of the Application'' from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's natural and human environmental impacts. The Coast Guard is the lead agency for determining the scope of this review, and in this case the Coast Guard has determined that review must include preparation of an EIS. This notice of intent is required by 40 CFR 1508.22, and briefly describes the proposed action and possible alternatives and our proposed scoping process. You can address any questions about the proposed action, the scoping process, or the EIS to the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying the application, which for purposes of environmental review is the ''no-action'' alternative.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when the Coast Guard has completed the following actions:

- Invites the participation of Federal, State, and local agencies, any affected Indian tribe, the applicant, and other interested persons;
- Determines the actions, alternatives, and impacts described in 40 CFR 1508.25;
- Identifies and eliminates from detailed study those issues that are not significant or that have been covered elsewhere;
- Allocates responsibility for preparing EIS components;
- Indicates any related environmental assessments or environmental impact statements that are not part of the EIS;
- Identifies other relevant environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, the Coast Guard will prepare a draft EIS, and we will publish a **Federal Register** notice announcing its public availability. (If you want that notice to be sent to you, please contact the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.) You will have an opportunity to review and comment on the draft EIS. The Coast Guard will consider those comments and then prepare the final EIS. As with the draft EIS, we will announce the availability of the final EIS and once again give you an opportunity for review and comment.

Summary of the Application

Northeast Gateway Energy Bridge, L.L.C. has proposed a facility to import liquefied natural gas (LNG) into the New England region providing a base load delivery of 400 million cubic feet per day (MMcfd) and capable of peak deliveries of approximately 800 MMcfd or more. The facility will be located offshore in Massachusetts Bay, approximately 13 miles south-southeast of the city of Gloucester, MA, in federal waters approximately 270 to 290 feet in depth, commonly referred to as Block 125.

Northeast Gateway will deliver natural gas to onshore markets via a new 24-inch-diameter-pipeline, approximately 16.4 miles in length, from the proposed deepwater port to the existing offshore 30-inch-diameter Algonquin HubLine Pipeline System. The proposed new pipeline lateral will be owned and operated by Algonquin Gas Transmission, LLC. Algonquin is seeking Federal Energy Regulatory Commission (FERC) approval for the pipeline concurrent with this deepwater port application. In addition, pipelines within the three-mile limit require an Army Corps of Engineers (USACE) permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Structures such as the moorings and lateral pipelines beyond the three-mile limit require a Section 10 permit.

As required by their regulations, FERC will also maintain a docket. This is available at the FERC Web site (*http://www.ferc.gov*) using the ''Documents & Filing'' then ''eLibrary'' link and FERC Docket number CP05–383. The eLibrary helpline is 1–866–208–3676 or e-mail online support is at *FercOnlineSupport@ferc.gov.* As required by their regulations, the USACE will maintain a permit file. The USACE New England District phone number is 978–318–8338 and their Web site is *http://www.nae.usace.army.mil.*

The new pipeline will be included in the National Environmental Policy Act (NEPA) review as part of the deepwater port application process. FERC and the USACE among others are cooperating agencies and will assist in the NEPA process as described in 40 CFR 1501.6; will be participating in the scoping meetings; and will conduct joint public meetings with the Coast Guard and MARAD when the draft EIS is released for public comment. Comments sent to the FERC docket or USACE will also be incorporated into the DOT docket and EIS to ensure consistency with the NEPA Process.

The Northeast Gateway deepwater port facility will consist of two subsea submerged turret loading buoys (STL Buoys), two flexible risers, two pipeline end manifolds (PLEMs), and two subsea flow lines. Each STL Buoy will connect to a PLEM using the flexible riser assembly, and the PLEM will connect to the subsea flow line. A fleet of specially designed Energy Bridge Regasification Vessels (EBRVs), each capable of transporting approximately 4.9 million cubic feet (138,000 cubic meters) of LNG, will deliver natural gas to the Northeast Gateway DWP.

The EBRVs will vaporize the LNG in a closed loop mode of recirculating fresh water on-board requiring no intake or discharge of seawater for the vaporization process. Natural gas will be used to operate the regasification facilities as well as to provide vessel electrical needs in normal operation.

Dated: September 28, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

H. Keith Lesnick,

Senior Transportation, Specialist, Deepwater and Ports Program Manager, U.S. Maritime Administration.

[FR Doc. 05–19951 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act; System of Records

ACTION: Proposed addition of a new system of records.

SUMMARY: The Department of the Interior (DOI) is issuing public notice of its intent to create a Privacy Act (PA) system of records in its inventory of records systems subject to the Privacy Act of 1974. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records systems maintained by the agency. The new system of records is captioned, ''Interior/DOI–16,'' and is titled, ''DOI LEARN.''

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period in which to make comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Departmental Privacy Act Officer, U.S. Department of the Interior, Office of the Chief Information Officer, Mail Stop (MS)–5312–Main Interior Building (MIB), 1849 C Street, NW., Washington, DC 20240, (202) 219–0868 or by e-mail to *Marilyn_Legnini@ios.doi.gov.* Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

DATES: Submit comments by November 4, 2005. Records system will become effective on November 4, 2005 unless comments warrant a revision.

FOR FURTHER INFORMATION CONTACT: Marta Kelly, LMS Project Manager, Department of the Interior, phone (202) 208–3212 e-mail: *Marta_Kelly@mms.gov.*

SUPPLEMENTARY INFORMATION: This notice announces a new Privacy Act system of records being implemented in conjunction with the Office of Personnel Management. The various bureaus, offices and programs within the Department of the Interior (DOI) offer unique training and education opportunities in the environmental, land management and conservation areas of study. These training services are provided to individuals and groups from the Department; other Federal agencies; State agencies; not-for-profit organizations; institutes of higher learning; international organizations or agencies and private citizens.

DOI LEARN is an electronic system that will allow all prospective students to view training offered by the various Interior bureaus and offices. Interior employees will be able to access the system, apply for authorized instructor-led classes, create learning plans, perform training gap analyses, view and launch computer or web-based training (CBT/WBT), and apply for and track approval of third-party vendor training offered outside DOI LEARN by use of an electronic application and registration module.

The Department of the Interior must collect certain personal information for all students in order to validate training records necessary for certification or for granting of college credit and to meet periodic reporting requirements mandated by the Office of the Personnel Management and Budget reports which typically include training expenses and student training days. Other information may be collected to comply with the American with Disabilities Act requirements to address facilities accommodations. Prospective students who are not Interior employees will submit their personal and billing information only when they decide upon a specific training class.

Although the Department will collect and use the information that will reside in DOI LEARN, the physical database will be managed by the Office of Personnel Management (OPM) in conjunction with the E-Training initiative of the Presidents Management Agenda for E-Government.

Dated: September 30, 2005.

Kathleen Wheeler,

Deputy Chief Human Capital Officer, Office of the Secretary.

INTERIOR/DOI–16

SYSTEM NAME:

DOI LEARN (Department-wide Learning Management System).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The system of records is located at a digital safe in a facility in Reston, Virginia, managed under contract to the Office of Personnel Management (OPM).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees, contractors, volunteers and appointees of the Department of the Interior (DOI), who receive training related to their official duties, whether or not sponsored by DOI bureaus and offices. All non-DOI individuals who participate in DOI-sponsored training or attend DOI-sponsored meetings. Non-DOI individuals are defined as Federal employees from other agencies; personnel from states, private agencies, not-for-profit organizations, universities; and private citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Interior employee information will be primarily imported from the Department of the Interior Federal Personnel and Payroll System (FPPS) on a bi-monthly basis. Occasional specific data entry for an individual Interior employee may be required if the employee is requesting training registration and the scheduled routine import has not yet added his/her information to the system. Specific data fields include: name, social security number, address information, gender, date of birth, organization code, position title, GS series, pay plan, grade level, supervisory status, type of appointment, education level, duty station code, department, bureau, date of Federal service, date of last promotion, occupational category, race, national origin, and adjusted basic pay.

Historical training records of current employees contained in the DOI LEARN system will be derived initially from existing systems where training data is currently being housed. Fields contained in this subset of data include, but are not limited to, necessary course information (*e.g.*, course title and class name) and class status information (*e.g.*, begin/end dates, completion status, certification requirements met, test scores, and acquired skills).

The personal information maintained on non-DOI individuals include the participants' name, social security number, agency address, agency affiliation, phone/fax numbers, e-mail address, supervisor's name and phone number, job series/grade/title, billing information (*e.g.*, responsible agency, tax ID number, DUNS number, purchase order numbers, agency location codes and credit card information); necessary course information (*e.g.*, course title, class name, objectives, description, and who should attend); class status information (begin/end dates, responsible class instructor, completion status, certification requirements met); and student transcripts (course(s) completed/not completed, test scores, acquired skills).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4101, *et seq.* (Government Organization & Employee Training); 5 U.S.C. 1302, 2951, 4118, 4308, 4506, 3101, 43 U.S.C. 1457, Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d) Executive Order 11348 (Providing for Further Training of Government Employees); as amended by Executive Order 12107 (Relating to Civil Service Commission and Labor Management in Federal Service); Code of Federal Regulations; 5 CFR 410, Subpart C (Establishing and Implementing Training Programs); Americans with Disabilities Act (42 U.S.C. 112101); and the E-government Act of 2002 (44 U.S.C. 3501, *et seq.*).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary uses of the records will be:

(1) To validate training records for certification purposes;

(2) To meet statistical reporting requirements of the Office of Personnel Management, Department of the Interior Office for Equal Employment Opportunity, and individual bureau and sub-agency management;

(3) To generate class rosters and transcript listings for use by course administrators;

(4) To generate requested student or personnel transcripts;

(5) To generate budget estimates related to training requirements;

(6) To ensure prompt and correct payment for services rendered;

(7) To report on mandatory training compliance;

(8) To determine enrollment numbers; and

(9) To review the exact dates of registration in order of acceptance.

Disclosures will be made:

(1) To release statistical information and training reports to other organizations who are involved with the training;

(2) To disclose information to other Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training courses or programs, private schools, etc.) for training purposes;

(3) To provide transcript information to education institutions upon the student's request in order to facilitate transfer of credit to that institution, and to provide college and university officials with information about their students working in the Student Career Experiment Program, Volunteer Service, or other similar programs necessary to a student's obtaining credit for the experience;

(4) To disclose to a Federal agency in the Executive, Legislative, or Judicial branch of government, in response to its request, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

(5) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, services requiring access to these records;

(6) To share logistical or attendance information with partner agencies (Government or non-Government) who, based on cooperative training agreements, have a need to know;

(7) (a) To any of the following entities or individuals, when the circumstances set forth in (b) are met:

i. The Department of Justice (DOJ);

ii. A court, adjudicative or other administrative body;

iii. The fiscally sponsoring organization or agency of the student;

iv. A party in litigation before a court or adjudicative or administrative body; or

v. Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any DOI employee acting in his or her official capacity;

(C) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(D) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purposes for which the records were compiled.

(iii) The data fields disclosed are limited in scope and will NOT include:

(A) Date of Birth;

(B) Social Security Number; and

(C) Race, national origin data

(8) To a congressional office in response to a written inquiry an individual covered by the system has made to the congressional office about him or herself;

(9) To an official of another Federal, State or local government or Tribal organization to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained; and

(10) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a (b), records can be disclosed to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a (f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a) (3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media on hard disks, magnetic tapes, compact disks and paper media.

RETRIEVABILITY:

Information from this system is retrieved by either unique identifying fields (*e.g.*, student name or social security number) or by general category (*e.g.*, course code, training location, class start date, registration date, affiliation, mandatory training compliance and payment status).

SAFEGUARDS:

DOI LEARN is maintained with controls meeting safeguard requirements identified in Departmental Privacy Act Regulations (43 CFR 2.51) for manual and automated records. Access to records in the system is limited to authorized personnel whose official duties require such access. Paper records are maintained in locked file cabinets and/or in secured rooms. Electronic records are maintained in conformity with Office of Management and Budget and Departmental guidelines reflecting the implementation of the Federal Information Security Management Act. Electronic data will be protected through user identification, passwords, database permissions and software controls. These security measures will establish different degrees of access for different types of users. A Privacy Impact Assessment for the hosting facility was conducted by the OPM.

RETENTION AND DISPOSAL:

Paper records serving as input documents to the DOI LEARN system will be maintained in accordance with the General Records Schedule (GRS–1, item 29), which prescribes that they be destroyed when 5 years old, or when superseded or obsolete, whichever is sooner, unless covered by other applicable records schedules. Electronic records maintained in the DOI LEARN system will be maintained for 65 years after separation of the individual receiving training from affiliation with the Department, in accordance with item 3150 of a new Office of the Secretary (OS) records schedule which is being drafted to cover the system. Paper and electronic records generated by the DOI LEARN system will also be maintained in accordance with item 3150 of the OS records schedule, unless covered by other applicable records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

(1) The system manager of the data contained within the DOI LEARN system is the Chief, Office of Human Resources, Department of the Interior, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Communications to the system manager should be addressed to the attention of the LMS Project Lead; and (2) the system manager for the physical location and the hardware housing the data is the Director, E-Training Initiative, Office of Personnel Management, 1900 E Street, NW., Room 3326, Washington, DC 20415.

NOTIFICATION PROCEDURE:

An individual requesting notification of the existence of records on himself or herself should address his/her request to the system manager whose address is provided in (1) from the ''System Manager'' section above. The request must be in writing, signed by the requester, and include the requester's full name and address, and social security number. (See 43 CFR 2.60.)

RECORDS ACCESS PROCEDURES:

An individual requesting access to records maintained on him or herself should address his/her request to the system manager whose address is provided in (1) from the ''System Manager'' section above. The request must be in writing, signed by the requester, and include the requester's full name and address, and social security number. The request envelope and letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' (See 43 CFR 2.63.)

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or herself should address his/her request to the system manager whose address is provided in (1) from the ''System Manager'' section above. The individual requesting the amendment must provide their full name and social security number. The request must be in writing and signed by the requester. (See 43 CFR 2.71.)

RECORD SOURCE CATEGORIES:

Information on Interior employees is provided from the existing Departmental Federal Personnel and Payroll System (FPPS) or directly from employees in communication with data entry personnel when the scheduled routine import has not yet added the employee information to the system. Information from non-DOI employees and other individuals registering for training through DOI LEARN is provided directly by the individuals in question using paper and electronic forms.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–19919 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan for the 39 North Dakota Limited-Interest National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a combined Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for the 39 North Dakota Limited-Interest National Wildlife Refuges (Refuges) is available. This CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) and the National Environmental Policy Act of 1969, describes how the Service intends to manage these Limited-Interest Refuges for the next 15 years.

DATES: Written comments must be received at the postal or electronic address listed below on or before December 5, 2005.

ADDRESSES: Please provide written comments to Laura King, Planning Team Leader, Division of Refuge Planning, Branch of Comprehensive Conservation Planning, c/o Tewaukon National Wildlife Refuge, 9754 143½ Avenue, SE., Cayuga, ND 58013, or electronically to *laura_king@fws.gov*. A copy of the Draft CCP and EA may be obtained by writing to Linda Kelly, U.S. Fish and Wildlife Service, Division of Refuge Planning, Box 25486, Denver, Colorado 80225–0486; or downloaded from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Laura King, Planning Team Leader, U.S. Fish and Wildlife Service, c/o Tewaukon National Wildlife Refuge, 9754 143½ Avenue, SE., Cayuga, ND 58013; telephone: 701–724–3598, extension 14; fax: 701–724–3683; or e-mail: *laura_king@fws.gov.*

SUPPLEMENTARY INFORMATION: The Refuges encompass 47,296 limited-interest acres within the boundaries of 39 individual National Wildlife Refuges (NWR). These refuges include: Appert Lake; Ardoch; Bone Hill; Brumba; Buffalo Lake; Camp Lake; Canfield Lake; Cottonwood; Dakota Lake; Half Way Lake; Hiddenwood; Hobart Lake; Hutchinson Lake; Johnson Lake; Lake George; Lake Otis; Lake Patricia; Lambs Lake; Little Goose; Lords Lake; Lost Lake; Maple River; Pleasant Lake; Pretty Rock; Rabb Lake; Rock Lake; Rose Lake; School Section Lake; Sheyenne Lake; Sibley Lake; Silver Lake; Snyder Lake; Springwater; Stoney Slough; Sunburst Lake; Tomahawk; Willow Lake; Wintering River; and Wood Lake.

These Refuges range in size from 160 acres (Half Way Lake NWR) to 5,506 acres (Rock Lake NWR). The approved acquisition boundaries for these Refuges, established in the 1930s and 1940s under the authority of Executive Orders and other conservation laws, total 54,140 acres. Six different North Dakota Managing Stations are responsible for these Refuges, including Arrowwood NWR Complex, Audubon NWR Complex District, Devils Lake WMD, J. Clark Salyer NWR Complex, Kulm WMD, and Long Lake NWR Complex. Most of these Refuges, except for two, Lake Patricia NWR and Pretty Rock NWR, are located east of the Missouri River. All Refuges have an overriding purpose of providing habitat for migratory birds, particularly waterfowl. No staff or funding is dedicated to these Refuges. Historically, management has been incidental to the Managing Station's other funded programs.

Limited-Interest Refuges began in the 1930s, in response to the crises of that time including drought, depression, and

declining waterfowl populations. Beginning in 1935, dozens of refuge and/or flowage easements were signed by the State and private landowners. These Limited-Interest Refuges, most perpetual, were established for the purposes of (1) water conservation, (2) drought relief, and (3) migratory bird and wildlife conservation purposes.

Funds poured into the surrounding communities as people went back to work, through the Work Progress/Project Administration (WPA) and Civilian Conservation Corps (CCC), building the structures needed to impound and control water levels. This reliable water source was not only critical to wildlife, but to the livelihood of the landowners and their farming operations.

Although most were perpetually protected, a new status was given to these lands in the late 1930s and 1940s. Lands in close proximity were combined, establishing an approved acquisition boundary, and designated as Migratory Bird Sanctuaries (later changed to National Wildlife Refuge) under the authorities of Executive Orders and various conservation laws. To this day, 93 percent of the lands covered by these Limited-Interest Refuges remain in private ownership, while 99 percent of the lands within the approved acquisition boundary are privately owned. This fact makes these Refuges unique among the more than 545 NWRs.

The habitat and value of these Refuges vary, but most have a water feature, such as a lake, impoundment, or river, associated with the Refuge, over which the Service holds a senior water right. Many have been developed, some extensively, and most are used for farming and/or recreation.

Many of these Limited-Interest Refuges have played a vital role in the recovery and protection of water resources and the waterfowl and other wildlife that depend on these areas. However, each Refuge needed to be re-evaluated to determine which can truly function as a NWR, as prescribed in the Improvement Act.

One of the first steps in this planning process was defining which rights the Service acquired through these agreements. To accomplish this, each agreement and dozens of historical records, including correspondence, news releases, and published reports, were reviewed by the planning team. From this documentation, it was determined that the Service has the right to regulate hunting and trapping, and the uses and management of the main body of water over which the Service has a water right. These uses would include, but are not limited to: fishing, boating, swimming, and water skiing. The Service will not regulate access to these private lands, upland development, and uses of naturally occurring wetlands. Even though these areas are valuable for wildlife, there is no evidence the Service intended to regulate these uses. Many of these Refuges had extensive developments on them before they were established. Again, these Limited-Interest Refuges were established for economic and preservation reasons.

No approved guidelines have ever been developed for managing these Refuges. This combined with the limited management options, as described in the previous paragraph, led the Service to develop a more programmatic plan, rather than a plan for each Refuge. These factors also resulted in the evaluation of only two alternatives, the No Action (Current Management) and the Proposed Action (Enhance the Program). Alternative A, the No Action alternative, proposes continuation of current management programs. Alternative B (Proposed Action) emphasizes replacement or maintenance of water management structures, within the guidelines of the agreement and water rights. It also emphasizes developing a strong partnership with the landowners, through the development of a structured program that would ensure an open dialogue necessary to address landowner issues, while providing them information on the program. In particular, they would receive updated information on Service programs that may provide them additional compensation for added habitat protections. Landowners would be given full control over whether they choose to participate in these programs.

Landowners have a right to refuse access to the general public. Although there are a few Refuges where Service-managed visitor services programs occur, most of these Refuges have remained closed for 70 years. Under this alternative, current visitor services programs would continue, if they remain compatible and there is a continued demand. The Service will also work with the State and interested landowners to develop additional recreational opportunities on the remaining Refuges. These opportunities may include wildlife observation and photography, environmental education and interpretation, hunting, and fishing. Again, the landowners would have the right to refuse access; however, if a program is acceptable to the landowners and found compatible, it must be made available to the general public. There may be limitations placed on this use, such as limited seasons and number of users, but no person may be denied the opportunity to participate. Although these are private lands, they are NWRs and subject to the same rules contained in the Code of Federal Regulations for visitor services programs.

A significant part of this process was determining the value of each Refuge to wildlife and its ability to function as a NWR as defined in the Improvement Act. From this process, six Refuges are being proposed for consideration for divestiture including: Bone Hill, Camp Lake, Cottonwood Lake, Lake Patricia, Sheyenne Lake, and School Section Lake. Factors considered included the level of development for recreation and commercial uses and resulting loss of biodiversity and land ownership patterns. It was determined that these Refuges no longer fulfill the purpose for which they were established. For example, Camp Lake currently has 238 cabins surrounding the lake, while Bone Hill has extensive farming and commercial uses occurring, including an elk farm and fertilizer plant. Cottonwood Lake has also seen extensive development and significant loss of biodiversity. Lake Patricia, Sheyenne Lake, and School Section Lake were once covered by easements signed by the State. These easements were unique in that they were revocable. The State has since exercised this option and has assumed management of these lands and waters. In some cases, the Service only controls parts of the main body of water. All surrounding lands are managed by the State for wildlife habitat. The State would assume management of these waters as well, should the Service divest these Refuges. The actual divestiture process for all six Refuges would be carried out once this plan is approved.

The Proposed Action for the remaining 33 Refuges would be addressed as a program. The six Managing Stations would evaluate and prioritize their Refuges, using primarily Habitat and Population Evaluation Team data resources, for added habitat protections. Highest priority would be given to those Refuges that contain native prairie habitat. Landowners would be provided informational newsletters about compensated habitat protection programs available. Participation in these programs would be voluntary and future opportunities would be provided at least annually thereafter. The Service would also cooperate with other conservation partners to develop programs that would meet common goals that support and enhance this program.

The Proposed Action was selected because it best meets the purposes and goals of these Refuges, as well as the goals of the National Wildlife Refuge System. It also ensures the landowners' rights are protected while giving them opportunities for added compensation. The Proposed Action will benefit federally listed species, shore birds, migrating and nesting waterfowl, and neotropical migrants, along with improving water habitat management and preservation. Compatible recreational opportunities may be provided if access is granted by willing landowners, and the resources are available to manage that use. This will result in widespread educational opportunities to teach the public, students, and future partners about the values, benefits, and goals of the National Wildlife Refuge System in North Dakota and the Nation.

Dated: June 22, 2005.

Mary G. Henry,

Acting Regional Director, Region 6, Denver, CO.

[FR Doc. 05–19937 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by November 4, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Peregrine Fund, Boise, Idaho, PRT–819573.

The applicant requests renewal of a permit to import harpy eagle (*Harpia harpyja*) samples (blood, tissue, and DNA), and to export/re-export live birds as part of an on-going conservation project which enhances the survival of the species. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Tom Stehn, Whooping Crane Recovery Plan Coordinator, U.S. Fish and Wildlife Service, Region 2, Austwell, TX, PRT–013808.

The applicant requests renewal of a permit to import captive-bred/captive-hatched and wild live specimens, captive-bred/wild collected viable eggs, biological samples from captive-bred/wild specimens, and salvaged materials from captive-bred/wild specimens of whooping cranes (*Grus americana*) from Canada, for completion of identified tasks and objectives mandated under the Whooping Crane Recovery Plan. Salvage materials may include, but are not limited to, whole or partial specimens, feathers, eggs and egg shell fragments. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Kimberly A. Vinette Herrin, D.V.M., Canton, GA, PRT–108865.

The applicant requests a permit to import biological samples from wild hawksbill sea turtle (*Eretmochelys imbricata*) for the purpose of scientific research. Samples will be collected opportunistically from live sea turtles and will be used for analyses of the immune function of oviductal secretions. This notification covers activities to be conducted by the applicant over a five-year period.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Wildlife Trust Inc., St. Petersburg, FL, PRT–107933.

The applicant requests a permit to capture, re-capture, hold, sample, tag, photograph and incidentally harass West Indian manatees (*Trichechus manatus*) for the purpose of scientific research to assess wild populations to better understand habitat requirements, population distribution, behavior, and threats from human interactions. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Scott L. Koelzer, Three Forks, MT, PRT–106766.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: September 9, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–19966 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by November 4, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Gary L. Sharkey, Albemarle, NC, PRT–106840.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gregg V. Severinson, Sidney NE, PRT–106843.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Richard J. Pierce, Concord, CA, PRT–108431.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Zachary K. Pallister, Helena, MT, PRT–108765.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John D. McKittrick, Helena, MT, PRT–108869.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kelly LaFay, Naples, FL, PRT–108871.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George Lloyd, Galveston, TX, PRT–108707.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Larry D. Schroeder, Belgrade, MT, PRT–107364.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: William M. McCarty, Rochester, MI, PRT–108268.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: William B. Dunavant, III, Memphis, TN, PRT–108607.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal, noncommercial use.

Applicant: James R. Bullis, Fargo, ND, PRT–108787.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: September 16, 2005.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–19967 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to

the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
106086, 105000, 104999	Feld Entertainment	70 FR 44679, August 3, 2005	September 1, 2005.
058658, 058659, 058660, 058661, 058662, 058663, 058664, 058665, 058666, 058667, 058668, 058669, 058670, 058672, 058679, 058680, 058681, 058682, 058683, 058685, 058686, 058687, 058734, 058735, 058736, 058737, 058738, 058739, 058745, 058747, 058748, 058750, 058751, 058752, 058753, 058758, 058759, 058762, 058780, 059163, and 777744.	Hawthorn Corporation	70 FR 44679, August 3, 2005	September 13, 2005.
106368	Craig S. Phillips	70 FR 44679; August 3, 2005	September 9, 2005.
106446	Nicholas D. Cortezi, II	70 FR 44679; August 3, 2005	September 9, 2005.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
104697	George H. Lawrence, III	70 FR 38190, July 1, 2005	September 2, 2005.

Dated: September 16, 2005.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–19968 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
106618	Grant R. Gilbert	70 FR 44679; August 3, 2005	September 8, 2005.
Marine Mammals			
103609	Mark A. Wayne	70 FR 41782; July 20, 2005	September 7, 2005.
104865	George R. Harms	70 FR 41782; July 20, 2005	September 7, 2005.
104866	Kevin D. Harms	70 FR 41782; July 20, 2005	September 7, 2005.
104867	Robert G. Harms	70 FR 41782; July 20, 2005	September 7, 2005.

Dated: September 9, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–19971 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance of Permit for Endangered Species.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency issuance of permit for endangered species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On September 16, 2005, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–109802) to the Virginia Polytechnic Institute and State University (CVM Phase 2), Blacksburg, VA, to import carcasses from wild chimpanzees (*Pan troglodytes*) collected in Tanzania for the purpose of scientific research. This action was authorized under Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service determined that an emergency affecting the health and life of the chimpanzees existed, and that no reasonable alternative was available to the applicant for the following reasons.

Virginia Polytechnic Institute and State University requested a permit to import carcasses from deceased animals found in the Mahale Mountains National Park in Kigoma, Tanzania and the Rubondo Island National Park in Mwanza, Tanzania for emergency and ongoing health and disease evaluation purposes. The carcasses will be utilized exclusively for diagnostic and scientific purposes. The specimens from these animals will be used to run diagnostic tests in order to determine the cause of illness and death related to an ongoing disease outbreak at the National Parks within the past several weeks. The necessary diagnostic testing is not available in Africa. The results of health and disease testing involving these chimpanzees will help determine what caused the outbreak in order to develop interventions to help prevent reoccurrence.

Dated: September 16, 2005.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–19970 Filed 10–4–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Isle Royale National Park Wilderness and Backcountry Management Plan/ Environmental Impact Statement; Correction

AGENCY: National Park Service.

ACTION: Notice of availability of the draft wilderness and backcountry management plan/draft environmental impact statement, Isle Royale National Park, Michigan; correction.

SUMMARY: In the December 28, 2004, **Federal Register**, the National Park Service (NPS) announced the availability of the draft wilderness and backcountry management plan/draft environmental impact statement (WBMP EIS) for Isle Royale National Park. Due to technical review delays the document will not be available until October.

Correction: The draft WBMP EIS will be made available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency. The NPS will notice the draft WBMP EIS availability in local media. The NPS will notice the Draft WBMP EIS availability and public meetings in local media and on the Planning, Environment, and Public Comment Web site at the following address: *http://parkplanning.nps.gov/publicHome.cfm.*

ADDRESSES: Copies of the WBMP EIS will be available on CD by request by writing to Phyllis Green, Superintendent, Attn: WBMP, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, MI 49931, or by e-mail message at *isro_wbmp@nps.gov.* A CD–ROM of the document can be picked up at the park's headquarters at the same address, or viewed over the Internet at the park's Web site at *http://www.nps.gov/isro/home.htm.* Finally, the document can be found on the Internet at the NPS Planning, Environment, and Public Comment (PEPC) Web site at: *http://parkplanning.nps.gov/publicHome.cfm.* This Web site allows the public to review and comment directly on this document.

Dated: August 26, 2005.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 05–19959 Filed 10–4–05; 8:45 am]

BILLING CODE 4312–92–P

DEPARTMENT OF THE INTERIOR

National Park Service

Bureau of Reclamation Draft Environmental Impact Statement for Clean Water Coalition Systems Conveyance and Operations Program; Lake Mead National Recreation Area; Clark County, NV; Notice of Availability

Summary: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and the corresponding Council of Environmental Quality implementing regulations (40 CFR parts 1500–08), the National Park Service and Bureau of Reclamation, as lead agencies for the Department of the Interior, announce the availability of the Clean Water Coalition Systems Conveyance and Operations Program (SCOP) Draft Environmental Impact Statement. Consistent with applicable laws and National Park Service and Bureau of Reclamation regulations and policies, the Draft SCOP EIS describes and analyzes four alternatives including the no action alternative.

The Draft SCOP Environmental Impact Statement evaluates the potential environmental impacts associated with three action (pipeline) alternatives, as well as a No-Action (no pipeline) Alternative. The three action alternatives include an Effluent Interceptor (EI) and Lake Conveyance System (LCS) that would collect and convey the highly treated effluent from the three treatment facilities to the Las Vegas Wash at a point upstream of Lake Las Vegas or to Lake Mead. The action alternatives would allow for flexible management of the highly treated effluent. A controlled amount of effluent would continue to be discharged to the Las Vegas Wash at each facility or at the EI Terminus. The discharge amount, velocity, and direction from the LCS diffuser would also be flexibly operated depending on the conditions of Lake Mead.

The Draft SCOP EIS evaluates effects of the alternatives on both visitor experience and park resources including: surface water hydrology, groundwater, water quality, biological resources/endangered species, cultural resources, recreation, land use, air quality, noise, socioeconomics, and other appropriate resource issues identified during the public scoping phase. An impairment analysis was also conducted for the portion of the proposed actions located on land administered by the National Park Service (NPS).

Purpose and Need For Federal Action: The purpose of implementing the proposal is to put into operation a treatment and conveyance system that will allow for flexible management of wastewater flow in the Las Vegas Valley, while maintaining water quality standards. Clark County, Nevada is one of the fastest growing counties in the U.S., and it is projected that the population in the area will be approximately 3,130,000 by 2035. The quantity of effluent treated and discharged in the Las Vegas Valley will increase as the population of the Valley increases. The treatment and conveyance facilities must accommodate the additional flows while continuing to meet current or future water quality standards for the Las Vegas Wash, Las Vegas Bay, and Lake Mead.

The Clean Water Coalition proposes to build and implement a system that provides maximum flexibility for management of treated effluent to:

- Meet current and future water quality standards for known pollutants, and as yet unknown standards for additional contaminants that may be regulated in the future;
- Protect and enhance the Lake Mead National Recreation Area (LMNRA) by continuing to meet beneficial uses and recreational and resource values of the LMNRA, while more than doubling the treated effluent flows discharged to Lake Mead;
- Recognize Lake Mead's likely lowering water levels, which are important because the amount of mixing and dilution available in the inner Las Vegas Bay are also decreasing as the Lake level decreases; and
- Avoid possible impacts to source-water quality at the Southern Nevada Water System intake structures.

Alternatives To Be Considered: The alternatives in the Draft SCOP EIS include expansions of the three treatment plants and the continued discharge of current and projected effluent flows to the Las Vegas Wash, with the use of conventional treatment processes to meet water quality standards (no action alternative); and construction and operation of a pipeline that would transport highly treated effluent from the three treatment facilities to a receiving area underwater within the Colorado River system (three action alternatives).

In addition to the No Action Alternative, the NPS and Bureau of Reclamation (BOR) have analyzed the potential impacts of three action alternatives: the Boulder Islands North Alternative, the Boulder Islands South Alternative, and the Las Vegas Bay Alternative. Under the No Action Alternative, the Clean Water Coalition would not construct pipelines to transport effluent from the treatment facilities. The three treatment agencies (City of Las Vegas, City of Henderson, and Clark County Water Reclamation District) would expand their facilities to handle the increasing quantities of wastewater through 2050. Current, conventional treatment processes and plant optimization would be used to meet the requirements set by the Nevada Division of Environmental Protection through the National Pollutant Discharge Elimination System permitting program. Facility expansions and modifications would occur on lands currently owned by the City of Las Vegas, Clark County, and City of Henderson.

Under the Boulder Islands North Alternative and the Boulder Islands South Alternative, the three treatment agencies would expand their facilities to handle the increasing quantities of wastewater through 2050, and current, conventional treatment processes and plant optimization would be used to meet water quality requirements. A pipeline would be constructed to convey highly treated effluent from the three treatment facilities to an alternate discharge location in the vicinity of the Boulder Islands in Lake Mead. The majority of the Boulder Islands North LCS and the Boulder Islands South LCS would be installed in a tunnel through the River Mountains.

Under the Las Vegas Bay Alternative, the three treatment agencies would expand their facilities to handle the increasing quantities of wastewater through 2050, and current, conventional treatment processes and plant optimization would be used to meet water quality requirements. A pipeline would be constructed to convey highly treated effluent from the three treatment facilities to an alternate discharge location in the Las Vegas Bay in Lake Mead.

Public Review and Comment: The Draft SCOP EIS will be available for public review for 60 days following the publication in the **Federal Register** of the Environmental Protection Agency's notice of the filing of this document (immediately upon confirmation of this date it will be announced on the LMNRA Web site and via local and regional press media). The NPS and BOR will hold public meetings to obtain oral comments during a two-week period in October 2005, as follows:

- October 17, Henderson Convention Center, 200 S. Water Street, Henderson, NV from 6:30–8:30 p.m.
- October 18, West Las Vegas Library, 951 W. Lake Mead Blvd., Las Vegas, NV from 6:30–8:30 p.m.
- October 19, West Flamingo Senior Center, 6255 W. Flamingo Road, Las Vegas, NV from 6:30–8:30 p.m.
- October 20, Summerlin Library, 1771 Inner Circle Drive, Las Vegas, NV from 6:30–8:30 p.m.
- October 24, Powerhouse Visitors Conference Center, 120 W. Route 66, Kingman, AZ from 6–8 p.m.
- October 25, Tempe Mission Palms Hotel, 60 E. 5th Street, Tempe, AZ from 6–8 p.m.
- October 26, Hilton Suites, 10 E. Thomas Road, Phoenix, AZ from 6–8 p.m.
- October 27, Radisson in Mission Valley, 1433 Camino Del Rio South, San Diego, CA from 6–8 p.m.
- October 28, Hyatt Regency Conference Center, 285 N. Palm Canyon Drive, Palm Springs, CA from 6–8 p.m.

All written comments on the Draft SCOP EIS must be postmarked or transmitted not later than 60 days after the EPA's notice of the filing published in the **Federal Register**; upon confirmation of this date it will be announced on the LMNRA Web site and via local and regional press media. Comments are to be addressed to the SCOP EIS Project Manager, PBS&J and may be sent either electronically to *eis@cleanwatercoalition.com*, via facsimile at (702) 990–7262, or by mail to 2270 Corporate Circle, Suite 100, Henderson, NV 89074.

Please note that names and addresses of people who comment become part of the public record. If individuals commenting request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold from the record a respondent's identity, as allowable by law. As always: the NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying

themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Copies of the Draft SCOP EIS may be obtained by contacting SCOP EIS Project Manager, PBS&J, 2270 Corporate Circle, Suite 100, Henderson, NV 89074 (or e-mailing to *eis@cleanwatercoalition.com* or telephone (702) 263–7275 extension 3014). The document will also be posted on the Internet at *http://www.cleanwatercoalition.com*, as well as made available at public libraries in the following locations:

Nevada—Boulder City Library, Las Vegas Public Library, Searchlight Library, Community College of Southern Nevada, Sahara West Library, Mesquite Library, University of Nevada-Las Vegas, James I. Gibson Library, Clark County Library, James R. Dickinson Library, Moapa Valley Library, Green Valley Library, Sunrise Public Library, Laughlin Library.

Arizona—Burton Barr Central Library, Tempe Public Library, University of Arizona Library, Meadview Community Library, Mohave County Library.

Utah—Washington County Library.

California—Environmental Services Library in San Diego, Palm Springs Public Library.

For further information about the public meetings or for obtaining copies of the document, please contact the SCOP EIS Project Manager, PBS&J, 2270 Corporate Circle, Suite 100, Henderson, NV 89074; e-mail *eis@cleanwatercoalition.com*; or call (702) 263–7275 extension 3014. For additional information regarding the alternatives to be considered or other matters pertaining to the conservation planning and environmental impact analysis process, please contact: Mr. Michael Boyles, National Park Service, Lake Mead National Recreation Area, 601 Nevada Way, Boulder City, NV 89005, telephone (702) 293–8978; or Mr. Anthony Vigil (LC–2621), Bureau of Reclamation, P.O. Box 61470, Boulder City Nevada 89006–1470, telephone (702) 293–8674.

Decision: After public review of the Draft SCOP EIS, the National Park Service and Bureau of Reclamation will carefully assess and consider all written comments and information obtained at the public meetings. A Final SCOP EIS will be prepared, which at this time is anticipated to be completed during summer 2006. Subsequent to release of the Final SCOP EIS and following a 30-days ''no action'' waiting period a Record of Decision will be prepared.

Dated: September 22, 2005.

Robert W. Johnson,

Regional Director, Lower Colorado Region, Bureau of Reclamation.

Dated: September 22, 2005.

Jonathan B. Jarvis,

Regional Director, Pacific West Region, National Park Service.

[FR Doc. 05–19960 Filed 10–4–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Two Hundred Fifty-Fifth Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on December 5, 2005.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or her designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. in the meeting room at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting (September 26, 2005)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   Salt Pond Visitor Center Update
   Highlands Center Update
   Update on Dune Shack Report
   ORV's
   Herring River Restoration Project
   Wilderness Areas
   Wind Turbines/Cell Towers
   News from Washington
6. Old Business
7. New Business
8. Date and agenda for next meeting
9. Public comment and
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: September 27, 2005.

George E. Price, Jr.,

Superintendent.

[FR Doc. 05–19961 Filed 10–4–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Region

ACTION: Notice/Request for Comments—The Christmas Pageant of Peace.

SUMMARY: The National Park Service is seeking public comments and suggestions on the planning of the 2005 Christmas Pageant of Peace.

SUPPLEMENTARY INFORMATION: The National Park Service is seeking public comments and suggestions on the planning of the 2005 Christmas Pageant of Peace, which opens on December 1, 2005, on the Ellipse (President's Park), south of the White House. The meeting will be held at 10:30 a.m. on November 3, 2005, in Room 234 of the National Capital Region Headquarters Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park).

Persons who would like to comment at the meeting should notify the National Park Service by October 31, 2005 by calling the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, SW., Washington, DC 20242, and will be accepted until November 3, 2005.

DATES: The meeting will be held on November 3, 2005. Written comments will be accepted until November 3, 2005.

ADDRESSES: The meeting will be held at 10:30 a.m. on November 3, 2005, in room 234 of the National Capital Region Headquarters Building, at 1100 Ohio Drive, SW., Washington, DC (East Potomac Park). Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, SW., Washington, DC 20242. Due to delays in mail delivery, it is

recommended that comments be provided by telefax at 202–208–1643 or by e-mail at *John_Stanwich@nps.gov.* Comments may also be delivered by messenger to the White House Visitor Center at 1450 Pennsylvania Avenue, NW., in Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Stanwich at the White House Visitor Center weekdays between 9 a.m., and 4 p.m., at (202) 208–1631.

Dated: September 19, 2005.

Maria Santo,

Deputy NPS Liaison to the White House.

National Park Service

Briefing Statement

September 19, 2005.

Unit: NPS Liaison to the White House, National Capital Region, National Park Service.

Title: **Federal Register** Meeting Notice/Request for Comments—The Christmas Pageant of Peace.

Congressional Districts: District of Columbia (Hon. Eleanor Holmes Norton).

Issues: The National Park Service is seeking public comments and suggestions on the planning of the 2005 Christmas Pageant of Peace.

The Pageant of Peace opens on December 1, 2005, on the ellipse (President's Park), south of the white House. Integral to the planning of the program for the Pageant of Peace, annual meetings are held to solicit comments and suggestions from the public. The meeting this year will be held at 10:30 a.m. on November 3, 2005, in Room 234 of the National Capital Region Headquarters Building in Washington, DC.

Contact: Maria Santo, Deputy NPS Liaison to the White House, National Capital Region, National Park Service (202) 619–6344.

[FR Doc. 05–19958 Filed 10–4–05; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing Donations and Fundraising, Director's Order #21

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is revising existing policies and procedures that guide its acceptance of donations and its relationships to those who desire to raise private sector support to benefit parks and programs. When adopted, the policies and procedures will apply to all units of the national park system, and will supersede and replace the policies and procedures temporarily re-issued in January, 2005.

DATES: Written comments will be accepted until December 5, 2005.

ADDRESSES: Draft Director's Order #21 is available on the Internet at *http://www.nps.gov/policy/DOrders/DO21draft.html*. Requests for copies and written comments should be sent to John Piltzecker, NPS Partnership Program Manager, National Partnership Office, 1849 C. St, NW., Mail Stop 2206, Washington, DC 20240 or to the electronic mail address: *partnerships@nps.gov*.

FOR FURTHER INFORMATION CONTACT: John Piltzecker at (202) 354–2150.

SUPPLEMENTARY INFORMATION: The NPS policies and procedures governing the role of the NPS in accepting donations and authorizing non-profit park support groups to raise funds on behalf of or for the benefit of the National Park System have previously been published in the form of Director's Order 21. That guideline will be superseded by the new Director's Order 21(and a reference guide that will be issued concurrently). The topics included in the draft Director's Order include: Acceptance of donations, recognition provided to donors, authorization of fundraising (including for construction projects), solicitation by employees, cause-related corporate campaigns, and marketing exclusivity granted to Proud Partners of the National Park Foundation.

Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: September 29, 2005.

Christopher K. Jarvi,

Associate Director, Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation.

[FR Doc. 05–19962 Filed 10–4–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1422]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

DATES: Monday, October 24, 2005, 8:30 a.m.–4:30 p.m., and Tuesday, October 25, 2005, 8:30 a.m.–12 p.m.

ADDRESSES: The meeting location is at the Sheraton Gunter Hotel San Antonio, 205 East Houston Street, San Antonio, Texas, telephone: (210) 227–3241.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, OJJDP, *Robin.Delany-Shabazz@usdoj.gov*, or (202) 307–9963.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), was established, pursuant to Section 3(2)A, Federal Advisory Committee Act, 5 U.S.C.A. App.2., to carry out its advisory functions pursuant to the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5633. The FACJJ is composed of one representative from each State and territory. The FACJJ's duties include the following: (1) Reviewing Federal policies regarding juvenile justice and delinquency prevention; (2) advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and (3) advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information, including a member list, may be found at *www.ojjdp.ncjrs.org/facjj/index.html*.

The meeting agenda is as follows:

Monday, October 24, 2005

8:30 a.m.–9 a.m. Opening and welcome by the Administrator of OJJDP and Chair of the FACJJ (Open Sessions).

9 a.m.–12 p.m. Discussion and Deliberation on FACJJ recommendations to the President, Congress, and the Administrator of OJJDP and discussion of implications of questionnaire results, with respect to application of core values (Open Sessions).

12 p.m.–1:30 p.m. Subcommittee meetings (Closed Sessions).
1:30 p.m.–2:30 p.m. Discussion of application core values, continued (Open Sessions).
2:30 p.m.–2:45 p.m. Break
2:45 p.m.–4:30 p.m. Reports from the committees of FACJJ and close (Open Sessions).

Tuesday, October 25, 2005

8:30 a.m.–12 p.m. Presentations on immigration issues pertaining to Texas and other bordering States, and the impact on juvenile justice operations (Open Sessions).

Members of the public who wish to attend open sessions should register by sending an e-mail with their name, affiliation, address, telephone number, and a list of sessions they plan to attend to *facjj@jjrc.org*. If e-mail is not available, call Daryel Dunston at (301) 519–6473. [**Note:** this is not a toll-free number.] Because space is limited, notification should be sent by Tuesday, October 14, 2005.

Written Comments: Interested parties may submit written comments by Tuesday, October 14, 2005, to Robin Delany-Shabazz, Designated Federal Official, OJJDP, at *Robin.Delany-Shabazz@usdoj.gov*, or by fax to 202–354–4063. [**Note:** this is not a toll-free number.] No oral presentations will be permitted at the meeting.

Marilyn Roberts,

Deputy Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 05–19918 Filed 10–4–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Request to be Selected as Payee (CM–910). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 5, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *Email bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION

I. Background

The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 901, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis and to certain survivors of the miner. If a beneficiary is incapable of handling their affairs, the person or institution responsible for their care is required to apply to receive the benefit payments on the beneficiary's behalf. The CM–910 is the form completed by the representative payee applicants. The payee applicant completes the form and mails it for evaluation to the district office that has jurisdiction over the beneficiary's claim file. Regulations 20 CFR 725.504–513 require the collection of this information. This information collection is currently approved for use through March 31, 2006.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to evaluate an applicant's ability to be a representative payee. If the Program were not able to screen representative payee applicants the beneficiary's best interest would not be served.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Request to be Selected as Payee.
OMB Number: 1215–0166.
Agency Number: CM–910.
Affected Public: Individuals or households; business or other for profit; not-for-profit institutions.
Average Time Per Response: 20 minutes.
Total Respondents: 2,200.
Total Annual Responses: 2,200.
Estimated Total Burden Hours: 773.
Frequency: On occasion.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $880.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 29, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning,Employment Standards Administration.

[FR Doc. 05–19954 Filed 10–4–05; 8:45 am]

BILLING CODE 4510–CK–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

September 27, 2005.

TIME AND DATE: 11 a.m., Thursday, October 6, 2005.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary*

of Labor v. *Elk Run Coal Company, Inc.,* Docket No. WEVA 2003–149. (Issues include whether the judge applied the proper legal standard in determining whether a violation 30 CFR 75.220(a)(1) (failure to comply with a roof control plan) was significant and substantial.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs, subject4 to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 05–20090 Filed 10–3–05; 12:16 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–147]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, October 20, 2005, 1 p.m. to 3 p.m. Eastern Daylight Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E. Street, SW., Room 5H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John D. Marinaro, Aerospace Safety Advisory Panel Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0914.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its Quarterly Meeting. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be NASA organizational areas of interest as they relate to safety. The Aerospace Safety Advisory Panel is composed of nine members and one ex-officio member.

The meeting will be open to the public up to the seating capacity of the room (40). Seating will be on a first-come basis. Please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance to reserve a seat. Visitors will be requested to sign a visitor's register and asked to comply with NASA security requirements, including the presentation of a valid picture ID before receiving an access badge. Foreign Nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; Green card/visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of visitor. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Susan Burch via email at *Susan.Burch@nasa.gov* or by telephone at (202) 358–0914.

Photographs will only be permitted during the first 10 minutes of the meeting. During the first 30 minutes of the meeting, members of the public may make a 5-minute verbal presentation to the Panel on the subject of safety in NASA. To do so, please contact Ms. Susan Burch on (202) 358–0914 at least 24 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA.

Dated: September 30, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–19984 Filed 10–4–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–146]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA is contemplating the granting of an exclusive license in the United States to practice the inventions described and claimed in U.S. Patents 4,815,279, ''Hybrid Plume Plasma Rocket,'' 4,893,470, ''Method of Hybrid Plume Plasma Propulsion,'' and 6,334,302, ''Variable Specific Impulse Magnetoplasma Rocket Engine,'' to Ad Astra Technologies, Inc., having a place of business in Houston, TX and incorporated in the state of Delaware. The fields of use may be limited to exoatmospheric applications. The patent rights in the inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective partially exclusive license may be granted within fifteen (15) days from the date of this published notice, unless NASA receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will be treated as objections to the grant of the contemplated partially exclusive license.

NASA's practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you may state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

ADDRESSES: Inquires, comments, objections, and other material relating to the contemplated license may be submitted to Patent Counsel, Office of Chief Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, Texas 77058.

FOR FURTHER INFORMATION CONTACT: Theodore Ro, Patent Attorney, NASA Johnson Space Center, Mail Stop AL, Houston, TX 77058–8452; telephone (281) 244–7148.

Dated: September 28, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–19983 Filed 10–4–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for three years.

DATES: Written comments on this notice must be received by December 5, 2005, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

For Additional Information or Comments: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone 703–292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: eRecruit.

OMB Number: 3145–0184.

Expiration Date of Approval: March 31, 2006.

Type of Request: Intent to seek approval to extend a current information collection for three years.

Abstract: National Science Foundation (NSF), Division of Human Resources Management (HRM), as part of its Workforce Planning efforts, is continuing to reengineer its business processes. Part of this reengineering effort is devoted to making the application and referral process for both internal and external applicants easier to use, more efficient and timely. Applicants apply on-line using a web-based resume, which prompts them to provide pertinent personal data necessary to apply for a position.

Use of the Information: The information is used by NSF to provide applicants with the ability to apply electronically for NSF positions and receive notification as to their qualifications, application dispensation and to request to be notified of future vacancies for which they may qualify.

In order to apply for vacancies, applicants are encouraged to submit certain data in order to receive consideration. Users only need access to the Internet for this system to work. This information is used to determine which applicants are best qualified for a position, based on applicant responses to a series of job related ''yes/no'' or ''multiple choice'' questions. The resume portion requires applicants to provide the same information they would provide were they submitting a paper OF–612. The obvious benefit being that the applicant may do so on-line, 24 hours a day/seven days a week and receive electronic notification about the status of their application or information on other vacancies for which they may qualify. Staff members of the Division of Human Resource Management and the selecting official(s) for specific positions for which applicants apply are only ones privy to the applicant data. The most significant data is not the applicant personal data such as address or phone number but rather their description of their work experience and their corresponding responses to those questions, which determine their overall rating, ranking, and referral to the selecting official.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes to create the on line resume and potentially less than 45 minutes to apply for jobs on-line.

There is no financial burden on the applicant, in fact this relieves much of the burden the former paper-intensive process puts on applicants.

Respondents: Individuals. 7,070 applicants applied for NSF vacancies between October 2004 and September 2005.

Average Number of Applicants: Approximately 63 responses per job opening for vacancy announcements between October 2004 and September 2005.

Estimated Total Annual Burden on Respondents: Approximately 45 minutes per respondent total time is all that is needed to complete the on-line application, for a total of 5,303 hours annually.

Frequency of Responses: Applicants need only complete the resume one time, and they may use that resume to apply as often as they wish for any NSF job opening.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 30, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–19981 Filed 10–4–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; 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: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: October 25, 2005, 8:30 a.m.–5:30 p.m. and October 26, 2005, 8:30 a.m.–2 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235 S, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and Executive Liaison, CEOSE, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 292–8040, *mtolbert@nsf.gov.*

Minutes: May be obtained from the Executive Liaison at the above address.

Purpose of Meeting: To provide advice and recommendations concerning broadening participation in science and engineering.

Agenda:

Tuesday, October 25, 2005

Welcome and Opening Statement by the CEOSE Chair.

Introductions.

Review of the CEOSE Meeting Agenda and Minutes.
Discussion of CEOSE Subcommittee Activities—Deliberations and Reports
Discussions/Presentations:
The National Science Foundation (NSF) Budget and Its Programmatic Implications.
NSF 2004 Minority Serving Institutions (MSI) Report to Congress: Implications and Use of the U.S. Department of Education's Definition of MSI.
Discussion with the NSF Director and NSF Deputy Director.
The NSF Office of Equal Opportunity Programs.
Enforcement of Title IX on Behalf of NSF.
Strategies for Increasing Gender Diversity in S&E Education—Findings from NSF Research on Gender in Science and Engineering.
ADVANCE: A Work in Progress.

Wednesday, October 26, 2005

Opening Statement by the CEOSE Chair.
Discussions/Presentations:
Subcommittee Deliberations and Reports Continued.
Report of CEOSE Liaisons to National Science Foundation Advisory Committees.
Activities to Publicize the CEOSE Reports to Congress.
Completion of Unfinished Business.

Dated: September 27, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–19932 Filed 10–4–05; 8:45 am]

BILLING CODE 7555–01–M

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 and Times:

October 20, 2005; 7:45 a.m.–6:30 p.m. (open 7:45–12:30, 1:30–5/closed 5–6:30).
October 21, 2005; 8 a.m.–2:30 p.m. (closed).

Place: University of Puerto Rico at Mayaguez, Mayaguez, Puerto Rico.

Type of Meeting: Part open.

Contact Person: Dr. Thomas P. Rieker, 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) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning progress of the Partnership for Research and Education in Materials.

Agenda:

October 20, 2005–Open for Directors overview of the Partnership for Research and Education in Materials.
October 21, 2005–Closed to review and evaluate progress of the Partnership for Research and Education in Materials.

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: September 27, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–19933 Filed 10–4–05; 8:45 am]

BILLING CODE 7555–01–M

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:

October 18, 2005; 7:45 a.m. – 6:30 p.m. (open 7:45 – 12:30, 1:30 – 5).
October 19, 2005; 8 a.m. – 2:30 p.m. (closed).

Place: University of Puerto Rico at Humacao, Humacao, Puerto Rico.

Type of Meeting: Part open.

Contact Person: Dr. Maija M. Kukla, 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) 292–4940.

Purpose of Meeting: To provide advice and recommendations concerning progress of the Partnership for Research and Education in Materials.

Agenda:

October 18, 2005—Open for Directors overview of the Partnership for Research and Education in Materials.
October 18 & 19, 2005—Closed to review and evaluate progress of the Partnership for Research and Education in Materials.

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. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 27, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–19934 Filed 10–4–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 483, ''Registration Certificate—*in vitro* Testing with Byproduct Material Under General License''.

3. *The form number if applicable:* NRC Form 483.

4. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30 days after the effective date of such change.

5. *Who will be required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

6. *An estimate of the number of responses:* 364.

7. *The estimated number of annual respondents:* 364 (104 NRC licensees and 260 Agreement State licensees).

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 42 hours (12

hours NRC licensees and 30 hours Agreement State licensees).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation therefrom to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 4, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John Asalone, Office of Information and Regulatory Affairs (3150–0038), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 26th day of September, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 05–19923 Filed 10–4–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 AND 50–311]

PSEG Nuclear, LLC, EXELON Generation Company, LLC, Salem Nuclear Generating Station, Unit Nos. 1 and 2; Notice of Withdrawal of Applicaton for Amendments to Facility Operating Licenses

The Nuclear Regulatory Commission (NRC or the Commission) has granted the request of PSEG Nuclear LLC (PSEG), on behalf of PSEG and Exelon Generation Company, LLC (the licensees), to withdraw its April 15, 2004, application for proposed amendments to Facility Operating License Nos. DPR–70 and DPR–75 for the Salem Nuclear Generating Station, Unit Nos. 1 and 2, respectively, located in Salem County, New Jersey.

The proposed change to the fire protection program would have decreased the carbon dioxide concentration, hold time, and number of discharges for the fire suppression systems in the 4160-volt switchgear rooms, 460-volt switchgear rooms, and lower electrical penetration area rooms. The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** November 23, 2004 (69 FR 68184). However, by letter dated September 26, 2005, PSEG withdrew the above-referenced proposed change.

For further details with respect to this action, see the application for amendments dated April 15, 2004, and the request for withdrawal dated September 26, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible electronically 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff by telephone at 1–800–397–4209, or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 29th day of September 2005.

For the Nuclear Regulatory Commission.

Stewart N. Bailey, Sr.

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–19922 Filed 10–4–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Pilot Program on the Use of Alternative Dispute Resolution in the Enforcement Program; Request for Comments and Announcement of Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments and announcement of public meeting.

SUMMARY: The Commission approved a pilot program to evaluate the use of Alternative Dispute Resolution (ADR) in cases involving the NRC's enforcement activities concerning allegations or findings of discrimination and other wrongdoing. *See* SECY–04–0044, available at *www.nrc.gov.* The pilot program was developed to evaluate whether the use of ADR could produce more timely and economical resolution of issues, more effective outcomes, and improved relationships. The NRC staff is now proceeding to evaluate the pilot program after approximately 1 year of operation. As an initial step in the evaluation, the NRC will be holding a public workshop on October 11, 2005, from 1–5 p.m., in room T2–B3 (ACRS Conference Room), Two White Flint North, 11545 Rockville, Maryland, to discuss proposed evaluation criteria and receive comments regarding the pilot program.

DATES: The comment period expires October 31, 2005.

ADDRESSES: Submit written responses to the topics addressed in the ''ADR Pilot Program: Proposed Evaluation Criteria'' document included on the ADR Web page, as well as other comments pertaining to the ADR pilot program, to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments may be submitted by e-mail to *nrcrep@nrc.gov.* Copies of comments received may be examined at the NRC's Public Document Room, located at One White Flint North

(O1–F21), Rockville, Maryland, 20852–2738.

FOR FURTHER INFORMATION CONTACT: Nick Hilton, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–3055, e-mail *ndh@nrc.gov.*

SUPPLEMENTARY INFORMATION: ''ADR'' is a term that refers to a number of processes that can be used in assisting parties in resolving disputes and potential conflicts. Most of these processes are voluntary, where the parties to the dispute are in control of the decision on whether to participate in the process and whether to agree to any resolution of the dispute. The parties are assisted in their efforts to reach agreement by a neutral third party.

Proposed evaluation criteria for the pilot program include: (1) Program effectiveness, including success of the program in helping ensure safety is maintained and settlement rate; (2) program efficiency in terms of both timeliness and cost efficiency; and (3) program satisfaction, including perceptions of fairness, usefulness, parties' satisfaction with outcomes, public perception of the program, and interest in using the program after initial program use. In addition, the NRC is interested in general comments regarding the pilot program and recommendations for a potential future program. The evaluation criteria are addressed in a document for comment on the NRC's Web site at *http://www.nrc.gov*, select What We Do, Enforcement, then Alternative Dispute Resolution. This document is also available in ADAMS at ML052640603.

After a brief presentation regarding the status of the pilot program, the meeting on October 11, 2005, will be conducted as a roundtable discussion among participants who have been invited to represent the broad spectrum of interests in the areas of allegations and enforcement. The participants include representatives from whistleblower counsels, the public, and the nuclear industry. The meeting is open to the public and all attendees will have an opportunity to offer comments and ask questions at selected points throughout the meeting. Any questions regarding the roundtable discussion should be directed to the meeting facilitator, Francis ''Chip'' Cameron by phone at 301–415–1642 or e-mail *fxc@nrc.gov.*

Dated at Rockville, Maryland, this 26th day of September, 2005.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Director, Office of Enforcement.

[FR Doc. 05–19931 Filed 10–4–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Notice of Meeting

Board Meetings: November 8–9, 2005—Las Vegas, Nevada; The U.S. Nuclear Waste Technical Review will meet to discuss technical and scientific issues related to the U.S. Department of Energy's efforts to develop a repository at Yucca Mountain in Nevada.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the U.S. Nuclear Waste Technical Review Board will meet in Las Vegas, Nevada, on Tuesday, November 8, and for a half-day on Wednesday, November 9, 2005. The Board will discuss a range of technical and scientific issues pertinent to the Department of Energy's (DOE) efforts to develop a repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada. The Board was established by Congress in the Nuclear Waste Policy Amendments Act of 1987 and charged with reviewing the technical and scientific validity of activities undertaken by the Secretary of Energy related to disposal, transportation, and packaging of spent nuclear fuel and high-level radioactive waste.

The meeting will be held at the Renaissance Las Vegas Hotel; 3400 Paradise Road, Las Vegas, Nevada; (tel) (702) 733–6533; (fax) (702) 735–3130. The meeting sessions will begin on both days at 8 a.m. and will continue until approximately 5:30 p.m. on Tuesday and 12:30 p.m. on Wednesday.

Topics that will be discussed at the meeting include corrosion of the repository waste package and drip shield, investigations undertaken in the saturated zone below the proposed repository, and models used to represent how waste will move through the proposed repository's surface facilities. A final meeting agenda will be available on the Board's Web site, *http://www.nwtrb.gov*, approximately one week before the date of the meeting. The agenda also may be obtained by telephone request at that time.

Time will be set aside at the end of the sessions on both days for public comments. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also may submit questions in writing. As time permits, written questions that are relevant to the discussion may be raised by Board members during the meeting.

Transcripts of the meetings will be available on the Board's Web site, by e-mail, on computer disk, or on library-loan basis in paper format beginning December 5, 2005. For assistance in obtaining meeting transcripts, contact Davonya Barnes, NWTRB staff.

A block of rooms has been set aside at the Renaissance Las Vegas Hotel for meeting participants. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. Reservations should be made by October 15, 2005, to ensure receiving the meeting rate.

For more information, contact Karyn Severson, NWTRB External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) (703) 235–4473; (fax) (703) 235–4495.

Dated: September 30, 2005.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 05–20015 Filed 10–4–05; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52527; File No. SR–Amex–2005–052]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to 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

September 29, 2005.

I. Introduction

On May 11, 2005, the American Stock Exchange LLC (''Amex'' 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: (1) Amend Amex Rules 22(c),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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. On August 12, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 30, 2005.[4] The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

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:[5] (i) Unusual market exception to the Commission's Firm Quote Rule; (ii) Intermarket Trading System disputes; (iii) member disputes; and (iv) cancellations or revisions to trades. In particular, the Exchange's proposal 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 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 a Floor Official's decision is documented by the Floor Official, the participating regulatory staff person will also sign the form, indicating whether he or she disagrees with the ruling.[6] To conform the remainder of the Exchange's rules with this proposed modification to Amex Rule 22(c), the proposed rule change also makes corresponding amendments 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 exception to the Commission's Firm Quote Rule and the Amex rules governing cancellation or revisions to trades.[7] Amex has indicated that 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.

The Amex also is proposing to amend Amex Rule 22(d) in two respects.[8] First, 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.'' The Exchange also proposes to make conforming changes to Amex Rule 118(n)(iii)[10] and Amex 135A(c)[11] to replace ''governor'' and ''Floor Governor,'' as applicable, with ''Senior Floor Official.''[12]

Second, the Exchange proposes to amend Amex Rule 22(d) to eliminate the second tier in the current review process of Floor Official decisions. Amex Rule 22(d) currently provides for three tiers of review in the appeal of a Floor Official's initial ruling.[13] The proposed rule will provide two levels of review to a Floor Official's initial decision, first by an Exchange Official, and then by a panel of three Senior Floor Officials. In addition, under the proposal, regulatory staff would advise and participate in each level of 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.

III. Discussion

The Commission has carefully reviewed the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[14] and, in particular, the requirements of Section 6 of the Act[15] and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[16] because 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. In particular, the Commission believes that the proposal is reasonably designed to (1) ensure a more consistent application of Amex's rules in Floor Official rulings and that such rulings are in accordance with applicable rules, and (2) increase the efficiency in reviewing such rulings, while continuing to provide for two levels of on-floor review.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Amex–2005–052), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5449 Filed 10–4–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52516; File No. SR–Amex–2005–078]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto To Temporarily Suspend Specialist Transaction Charges for the Nasdaq-100 Index Tracking Stock® (QQQQ)

September 27, 2005.

On July 15, 2005, the American Stock Exchange LLC (''Amex'') filed with the

[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.

[4] *See* Securities Exchange Act Release No. 52325 (August 23, 2005), 70 FR 51392.

[5] Floor Officials are officers of the Exchange, 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.

[6] The regulatory staff person will be responsible for maintaining the documentation related to Floor Official rulings and reviews that require the participation of a regulatory staff person.

[7] 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.

[8] Amex Rule 22(d) relates to the procedures for reviewing a Floor Official's initial ruling.

[9] These changes are based on a recent amendment to Amex Rule 21 approved by the Commission. *See* Securities Exchange Act Release No. 51503 (April 7, 2005), 70 FR 19534 (April 13, 2005).

[10] Amex Rule 118 relates to trading in Nasdaq National Market securities.

[11] Amex 135A relates to cancellations of, and revisions in, transactions where both the buying and selling members do not agree to the cancellation or revision.

[12] 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.''

[13] *See supra* note 5.

[14] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

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 its Participant Fee Schedule to suspend specialist transaction charges for the trading of Nasdaq-100 Index Tracking Stock® (''QQQQ''), retroactively from July 1, 2005 through July 17, 2005. On August 12, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 23, 2005.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act [6] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–Amex–2005–078), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5454 Filed 10–4–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex made minor technical changes to the proposed rule text and provided further discussion on how the proposal is consistent with the requirement under Section 6(b)(4) of the Act to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. *See* 15 U.S.C. 78f(b)(4).

[4] *See* Securities Exchange Act Release No. 52273 (August 16, 2005), 70 FR 49339.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52526; File No. SR–NASD–2005–057

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Summary Orders in the Nasdaq Market Center

September 29, 2005.

On April 22, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), 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 relating to Summary Orders in the Nasdaq Market Center. Nasdaq has proposed to allow all participants in the Nasdaq Market Center to enter attributable and non-attributable Summary Orders, and to make Summary Orders available for transactions in exchange-listed securities. Currently, the use of Summary Orders is restricted to Nasdaq Order-Delivery ECNs for transactions in Nasdaq-listed securities.

The proposed rule change was published for comment in the **Federal Register** on August 25, 2005.[3] The Commission received no comments on the proposal.

After careful review, 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 self-regulatory organization.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act [5] in that it is designed to prevent fraudulent and manipulative acts and practices, 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.

The Commission notes that Summary Orders permit an order entering party to receive a warning if the price of the order would lock or cross the best prices then displayed in the Nasdaq Market Center by rejecting the order back to such order entering party.[6] The Commission notes that Summary Orders give the order entering party the choice of either immediately executing against the available trading interest or providing liquidity through a posted order. The Commission notes that Nasdaq has stated that the significance of having such a choice lies in the potential for having reduced transaction costs as a liquidity provider.[7] The Commission notes that Summary Orders are currently only available to Nasdaq Order-Delivery ECNs. The Commission notes that the proposal would extend the ability to enter Summary Orders, on either an attributable or non-attributable basis, to all Nasdaq Market Center participants. The Commission also notes that the proposal would extend the usage of Summary Orders to transactions in exchange-listed securities, in addition to Nasdaq-listed securities.

The Commission believes that the proposal, by extending the availability of Summary Orders to all participants in the Nasdaq Market Center entering into transactions in Nasdaq-listed or exchange-listed securities, should increase the level of control Nasdaq Market Center participants have over the processing of their orders and allow them potentially to enter into more economically efficient transactions.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–NASD–2005–057) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–5450 Filed 10–4–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52303 (August 18, 2005), 70 FR 49957 (''Notice'').

[4] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] If the order does not lock or cross the best price, the system retains it for normal processing.

[7] Nasdaq has stated that liquidity providers may, in some cases, receive an execution fee rebate, thus reducing their transaction costs. *See* Notice.

[8] 15 U.S.C. 78s(b)(2).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request

approval on a new and/or currently approved information collection.

DATES: Submit comments on or before December 5, 2005.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Joseph Sobota, Assistant Advocate, Office of Advocacy, Small Business Administration, 409 3rd Street SW., Suite 7800, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Joseph Sobota, Assistant Advocate, 202–205–6952, *Joseph.sobota@sba.gov*. Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.sba*.

SUPPLEMENTARY INFORMATION:

Title: ''Veterans Business Ownership Survey''.

Description of Respondents: The general veteran population, veterans business owners and veterans who have a service connected disability.

Form No: N/A.

Annual Responses: 1.

Annual Burden: 400.

Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Randy Christopherson, Director, Denver Finance Center, Small Business Administration, 721 19th Street, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Randy Christopherson, Director, 313–844–0054, *Randy.christopherson@sba.gov*. Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.sba*.

SUPPLEMENTARY INFORMATION:

Title: ''Transaction Report Loans Serviced by Lenders''.

Description of Respondents: Small Business Administration Participating Lenders.

Form No: 172.

Annual Responses: 18,637.

Annual Burden: 3,089.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 05–19974 Filed 10–4–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates; Quarterly Determinations

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.500 (4½) percent for the October–December quarter of FY 2006.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 05–19975 Filed 10–4–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region II Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting on Wednesday, October 12, 2005, starting at 10 a.m. eastern standard time. The meeting will take place at the Manufacturers & Traders Trust Company, One M&T Plaza, Buffalo, New York to discuss such matters that may be presented by members and staff of the U.S. Small Business Administration, or others present.

Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, Buffalo District Office, in writing by letter or fax no later than Friday, October 7, 2005 in order to be put on the agenda. Franklin J. Sciortino, District Director, Buffalo District Office, U.S. Small Business Administration, Niagara Center, 130 S. Elmwood, Suite 540, Buffalo, New York 14202; telephone (716) 551–4301 or fax (716) 551–4418.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–19979 Filed 10–4–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Program Advisory Board; Public Meeting

The U.S. Small Business Administration, Office of Small Business Development Centers, National Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration, or interested others. The conference call will be held on Tuesday, January 18, 2006 at 1 p.m. Eastern Standard Time.

Anyone wishing to make an oral presentation to the Board 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. 05–19976 Filed 10–4–05; 8:45 am]

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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 a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration, or interested others. The conference call will be on Tuesday, December 20, 2005 at 1 p.m. Eastern Standard Time.

Anyone wishing to make an oral presentation to the Board 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. 05–19977 Filed 10–4–05; 8:45 am]

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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 a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration, or interested others. The conference call will be held on Tuesday, November 15, 2005 at 1 p.m. eastern standard time.

Anyone wishing to make an oral presentation to the Board 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. 05–19978 Filed 10–4–05; 8:45 am]

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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 a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration, or interested others. The conference call will be held on Tuesday, October 18, 2005 at 1 p.m. eastern standard time.

Anyone wishing to make an oral presentation to the Board 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. 05–19980 Filed 10–4–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5199]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2007) Visa Program

ACTION: Notice of Registration for the Diversity Immigrant Visa Program.

This public notice provides information on how to apply for the DV 2007 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(G)).

Instructions for the 2007 Diversity Immigrant Visa Program (DV–2007)

The congressionally mandated Diversity Immigrant Visa Program is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101–649) amended INA 203 to provide for a new class of immigrants known as ''Diversity Immigrants'' (DV immigrants). The Act makes available 50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. Applicants for Diversity Visas are chosen by a computer-generated random lottery drawing. The visas, however, are distributed among six geographic regions, with a greater number of visas going to regions with lower rates of immigration, and with no visas going to citizens of countries sending more than 50,000 immigrants to the U.S. in the past five years. Within each region, no one country may receive more than seven percent of the available Diversity Visas in any one year.

For DV–2007, natives of the following countries are not eligible to apply because the countries sent a total of more than 50,000 immigrants to the U.S. in the previous five years (the term ''country'' in this notice includes countries, economies and other jurisdictions explicitly listed in this notice):

Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Poland, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible.

Application Submission Dates

Entries for the DV–2007 Diversity Visa Lottery must be submitted electronically between noon, eastern standard time, (e.s.t.) Wednesday, October 5, 2005 and noon, e.s.t. Sunday, December 4, 2005. Applicants may access the Electronic Diversity Visa Entry Form (EDV Entry Form) at *http://www.dvlottery.state.gov* during the registration period beginning noon, e.s.t. October 5, 2005. Paper entries will not be accepted. Applicants are strongly encouraged to not wait until the last week of the registration period to enter. Heavy demand may result in delays. No entries will be accepted after noon, e.s.t., on December 4, 2005.

Requirements for Entry

Applicant must be a native of one of the countries listed. See ''List of Countries by Region Whose Natives Qualify.''

In most cases this means the country in which the applicant was born. However, there are two other ways a person may be able to qualify. First, if a person was born in a country whose natives are ineligible but his/her spouse was born in a country whose natives are eligible, such person can claim the spouse's country of birth provided both the applicant and spouse are issued visas and enter the U.S. simultaneously. Second, if a person was born in a country whose natives are ineligible, but neither of his/her parents was born there or resided there at the time of his/her birth, such person may claim nativity in one of the parents' country of birth if it is a country whose natives qualify for the DV–2007 program.

Applicants must meet either the education or training requirement of the DV program.

An applicant must have either a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education; or two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's O*Net OnLine database will be used to determine qualifying work experience.

If the applicant cannot meet these requirements, he/she should not submit an entry to the DV program.

Procedures for Submitting an Entry to DV–2007

The Department of State will only accept completed EDV Entry Forms submitted electronically at *http://www.dvlottery.state.gov* during the registration period beginning at 12 p.m. e.s.t. (GMT–5) on October 5, 2005 and ending at 12 p.m. e.s.t. (GMT–5) on December 4, 2005.

All entries by an applicant will be disqualified if more than one entry for the applicant is received, regardless of who submitted the entry. Applicants may prepare and submit their own entries or have someone submit the entry for them.

Successfully registered entries will result in a display of a confirmation screen containing the applicant's name, date of birth, country of chargeability, and a date/time stamp. The applicant may print this confirmation screen for his/her records using the print function of the Web browser.

Paper entries will not be accepted.

The entry will be disqualified if all required photos are not submitted. Recent photographs of the applicant and his/her spouse and each child under 21 years of age, including all natural children as well as all legally-adopted and stepchildren (except a child who is already a U.S. citizen or a Legal Permanent Resident), even if a spouse or child no longer resides with the applicant or is not planning to immigrate under the DV program, must be submitted electronically with the EDV Entry Form. Group or family photos will not be accepted; there must be a separate photo for each family member.

A digital photo (image) of each applicant, his/her spouse, and children must be submitted on-line with the EDV Entry Form. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

Entries are subject to disqualification if the photographs are not recent, have been manipulated, or fail to meet the specifications explained below.

Instructions for Submitting a Digital Photo (Image)

The image file must adhere to the following compositional specifications and technical specifications and can be produced in one of the following ways: Taking a new digital image or using a digital scanner to scan a submitted photograph.

Compositional Specifications

The submitted digital image must conform to the following compositional specifications or the entry will be disqualified. The person being photographed must directly face the camera. The head of the person should not be tilted up, down, or to the side. The head should cover about 50% of the area of the photo. The photograph should be taken with the person in front of a neutral, light-colored background. Dark or patterned backgrounds are not acceptable. The photo must be in focus. Photos in which the person being photographed is wearing sunglasses or other items that detract from the face will not be accepted. Photos of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant. Photos of applicants with tribal or other headgear not specifically religious in nature will not be accepted. Photos of military, airline, or other personnel wearing hats will not be accepted.

Technical Specifications

The submitted digital photograph must conform to the following technical specifications or the system will automatically reject the EDV Entry Form and notify the sender.

When taking a new digital image: The image file format must be in the Joint Photographic Experts Group (JPEG) format; it must have a maximum image file size of sixty-two thousand five hundred (62,500) bytes; the image resolution must be 320 pixels high by 240 pixels wide; the image color depth 24-bit color or 8-bit grayscale. [**Note:** Monochrome images (2-bit color depth) will not be accepted.]

Before a photographic print is scanned it must meet the following specifications: The print size must be 2 inches by 2 inches (50mm x 50mm) square; the print color image must be either in color or grayscale.

The photographic print must also meet the compositional specifications. If the photographic print meets the print size, print color and compositional specifications, scan the print using the following scanner specifications: Scanner resolution must be 150 dots per inch (dpi); the image file in Joint Photographic Experts Group (JPEG) format; maximum image file size will be sixty-two thousand five hundred (62,500) bytes; the image resolution at 300 by 300 pixels; the image color depth 24-bit color or 8-bit grayscale. [**Note:** Monochrome images (2-bit color depth) will not be accepted.]

Information Required for the Electronic Entry

There is only one way to enter the DV–2007 lottery. Applicants must submit an EDV Entry Form, which is accessible only at *http://www.dvlottery.state.gov.* Failure to complete the form in its entirety, and with correct information, will disqualify the applicant's entry. Applicants will be asked to submit the following information on the EDV Entry Form.

1. FULL NAME—Last/Family Name, First Name, Middle name.
2. DATE OF BIRTH—Day, Month, Year.
3. GENDER—Male or Female.
4. CITY/TOWN OF BIRTH.
5. COUNTRY OF BIRTH—The name of the country should be that which is currently in use for the place where the applicant was born.
6. APPLICANT PHOTOGRAPH—(See information in this notice on photo specifications).
7. MAILING ADDRESS—Address, City/Town, District/Country/Province/State, Postal Code/Zip Code, Country.
8. PHONE NUMBER (optional).
9. E-MAIL ADDRESS (optional).
10. COUNTRY OF ELIGIBILITY IF THE APPLICANT'S NATIVE COUNTRY IS DIFFERENT FROM COUNTRY OF BIRTH—If the applicant is claiming nativity in a country other than his/her place of birth, this information must be indicated on the entry.
11. MARRIAGE STATUS—Unmarried, Married, Divorced, Widowed, LegallySeparated.
12. NUMBER OF CHILDREN THAT ARE UNMARRIED AND UNDER 21 YEARS OF AGE—Except children that are either U.S. legal permanent residents or American citizens.
13. SPOUSE INFORMATION—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph.
14. CHILDREN INFORMATION—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph.

Note: Entries must include the name, date and place of birth of the applicant's spouse and all natural children, as well as all legally-adopted and stepchildren, who are unmarried and under the age of 21 at the time of entry (except children who are already U.S. citizens or Legal Permanent Residents), even if they are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with you and/or will not immigrate with you. Note that married children and children 21 years or older will not qualify for the Diversity Visa. Failure to list all children will result in your disqualification for the visa. (See question 11 on the list of Frequently Asked Questions.)

Selection of Applicants

Applicants will be selected at random by computer from among all qualified entries. Those selected will be notified by mail between May and July 2006 and will be provided further instructions, including information on fees connected with immigration to the U.S. Persons not selected will not receive any notification. U.S. embassies and consulates will not be able to provide a list of successful applicants. Spouses and unmarried children under age 21 of successful applicants may also apply for visas to accompany or follow to join the principal applicant. DV–2007 visas will be issued between October 1, 2006 and September 30, 2007.

In order to actually receive a visa, applicants selected in the random drawing must meet all eligibility requirements under U.S. law. Processing of entries and issuance of Diversity Visas to successful applicants and their eligible family members must occur by midnight on September 30, 2007. Under no circumstances can Diversity Visas be issued or adjustments approved after this date, nor can family members

obtain Diversity Visas to follow to join the applicant in the U.S. after this date.

Important Notice

No fee is charged to enter the annual DV program. The U.S. Government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV casework for applicants do so without the authority or consent of the U.S. Government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the applicant's discretion.

A qualified entry submitted electronically and directly by an applicant has an equal chance of being selected by the State Department computer, as does an entry submitted electronically through a paid intermediary who completes the entry for the applicant. Every entry received during the lottery registration period will have an equal random chance of being selected within its region. However, receipt of more than one entry per person will disqualify the person from registration, regardless of the source of the entry.

Frequently Asked Questions About DV Registration

1. What does the term ''native'' mean? Are there any situations in which persons who were not born in a qualifying country may apply?

''Native'' ordinarily means someone born in a particular country, regardless of the individual's current country of residence or nationality. But for immigration purposes ''native'' can also mean someone who is entitled to be ''charged'' to a country other than the one in which he/she was born under the provisions of Section 202(b) of the Immigration and Nationality Act.

For example, if a principal applicant was born in a country that is not eligible for this year's DV program, he or she may claim ''chargeability'' to the country where his or her derivative spouse was born, but he or she will not be issued a DV–1 unless the spouse is also eligible for and issued a DV–2, and both must enter the U.S. together on the DVs. In a similar manner, a minor dependent child can be ''charged'' to a parent's country of birth.

Finally, any applicant born in a country ineligible for this year's DV program can be ''charged'' to the country of birth of either parent as long as neither parent was a resident of the ineligible country at the time of the applicant's birth. In general, people are not considered residents of a country in which they were not born or legally naturalized if they are only visiting the country temporarily or stationed in the country for business or professional reasons on behalf of a company or government.

An applicant who claims alternate chargeability must indicate such information on the application for registration. Please be aware that listing an incorrect country of eligibility (*i.e.* one to which the entrant cannot establish a valid claim) may disqualify the entry.

2. Are there any changes or new requirements in the application procedures for thisDiversity Visa registration?

All DV–2007 lottery entries must be submitted electronically at *http://www.dvlottery.state.gov* between 12 noon e.s.t. Wednesday, October 5, 2005 and 12 noon e.s.t. Sunday, December 4, 2005. No paper entries will be accepted.

The Department of State implemented an electronic registration system for the lottery in order to make the Diversity Visa process more efficient and secure. The Department utilizes special technology and other means to identify applicants who commit fraud for the purposes of illegal immigration or who submit multiple entries.

The DV–2007 Diversity Immigrant Visa Program registration period will run from noon Eastern Standard Time October 5, 2005 through noon Eastern Standard Time December 4, 2005.

3. Are photographs required for each family member, or only for the principal applicant?

Recent and individual photos of the applicant, his or her spouse and all children under 21 years of age are required. Family or group photos are not accepted. Check the information on the photo requirements included in this notice.

4. Why do natives of certain countries not qualify for the Diversity Program?

Diversity Visas are intended to provide an immigration opportunity for persons from countries other than the countries that send large numbers of immigrants to the U.S. The law states that no Diversity Visas shall be provided for natives of ''high admission'' countries. The law defines this to mean countries from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the previous five years. Each year, the U.S. Citizenship and Immigration Services (USCIS) adds the family and employment immigrant admission figures for the previous five years in order to identify the countries whose natives must be excluded from the annual Diversity Lottery. Because there is a separate determination made before each annual DV entry period, the list of countries whose natives do not qualify may change from one year to the next.

5. What is the numerical limit for DV–2007?

By law, the U.S. Diversity Immigration Program makes available a maximum of 55,000 permanent residence visas each year to eligible persons. However, the Nicaraguan Adjustment and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning as early as DV–99, and for as long as necessary, 5,000 of the 55,000 annually-allocated Diversity Visas will be made available for use under the NACARA program. The actual reduction of the limit to 50,000 began with DV–2000 and remains in effect for the DV–2007 program.

6. What are the Regional Diversity Visa (DV) limits for DV–2007?

The U.S. Citizenship and Immigration Services (USCIS) determines the DV regional limits for each year according to a formula specified in Section 203(c) of the Immigration and Nationality Act (INA). Once the USCIS has completed the calculations, the regional visa limits will be announced.

7. When will entries for the DV–2007 program be accepted?

The DV–2007 entry period will begin on noon EST Wednesday, October 5, 2005 and will last through noon EST Sunday, December 4, 2005. Each year millions apply for the program during the registration period. The massive volume of entries creates an enormous amount of work in selecting and processing successful applicants. Holding the entry period during October through December will ensure successful applicants are notified in a timely manner, and will give both them and our embassies and consulates time to prepare and complete entries for visa issuance. Applicants are strongly encouraged to enter early in the registration period. Excessive demand at the end of the registration period may slow the system down. No entries whatsoever will be accepted after noon e.s.t. Sunday, December 4, 2005.

8. May persons who are in the U.S. apply for the program?

Yes, an applicant may be in the U.S. or in another country, and the entry may be submitted from the U.S. or from abroad.

9. Is each applicant limited to only one entry during the annual DV registration period?

Yes, the law allows only one entry by or for each person during each registration period; applicants for whom more than one entry is submitted will be

disqualified. The Department of State employs sophisticated technology and other means to identify individuals that submit multiple entries during the registration period. Applicants submitting more than one entry will be disqualified and an electronic record will be permanently maintained by the Department of State. Applicants may apply for the program each year during the regular registration period.

10. May a husband and a wife each submit a separate entry?

Yes, a husband and a wife may each submit one entry, if each meets the eligibility requirements. If either were selected, the other would be entitled to derivative status.

11. What family members must I include on my DV entry?

On your entry you must list your spouse, that is, husband or wife, and all unmarried children under 21 years of age at the time the entry is submitted, with the exception of children who are already a U.S. citizens or a Legal Permanent Residents. You must list your spouse even if you are currently separated from him or her, unless you are legally separated (*i.e.* there is a written agreement recognized by a court or a court order). If you are legally separated or divorced, you do not need to list your former spouse. You must list ALL your children who are unmarried and under the age of 21 years, whether they are your natural children, your spouse's children, or children you have formally adopted in accordance with the laws of your country, unless such a child is already a U.S. citizen or Legal Permanent Resident. List all children under 21 years of age even if they no longer reside with you or you do not intend for them to immigrate under the DV program. The fact that you have listed family members on your entry does not mean that they later must travel with you. They may choose to remain behind. However, if you include an eligible dependent on your visa application forms that you failed to include on your original entry, your case will be disqualified. (This only applies to persons who were dependents at the time the original application was submitted, not those acquired at a later date.) Your spouse may still submit a separate entry, even though he or she is listed on your entry, as long as both entries include details on all dependents in your family. (See question 10 above.)

12. Must each applicant submit his or her own entry, or may someone act on behalf of an applicant?

Applicants may prepare and submit their own entries or have someone submit the entry for them. Regardless of whether an entry is submitted by the applicant directly or assistance is provided by an attorney, friend, relative, etc., only one entry may be submitted in the name of each person. If the entry is selected, the notification letter will be sent only to the mailing address provided on the entry.

13. What are the requirements for education or work experience?

The law and regulations require that every applicant must have at least a high school education or its equivalent or, within the past five years, have two years of work experience in an occupation requiring at least two years training or experience. A ''high school education or equivalent'' is defined as successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Documentary proof of education or work experience should not be submitted with the lottery entry, but must be presented to the consular officer at the time of the visa interview. To determine eligibility based on work experience, definitions from the Department of Labor's O*Net OnLine database will be used.

14. How will successful entrants be selected?

All entries received from each region will be individually numbered by computer. After the end of the registration period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered, the second entry selected the second registration, etc. All entries received during the registration period will have an equal chance of being selected within each region. When an entry has been selected, the applicant will be sent a notification letter by the Kentucky Consular Center, which will provide visa application instructions. The Kentucky Consular Center will continue to process the case until those who are selected are instructed to appear for visa interviews at a U.S. consular office, or until those able to do so apply at a USCIS office in the United States for change of status.

15. May winning applicants adjust their status with USCIS?

Yes, provided they are otherwise eligible to adjust status under the terms of Section 245 of the INA, selected applicants who are physically present in the United States may apply to the U.S. Citizenship and Immigration Services (USCIS) for adjustment of status to permanent resident. Applicants must ensure that USCIS can complete action on their cases, including processing of any overseas derivatives, before September 30, 2007, since on that date registrations for the DV–2007 program expire. No visa numbers for the DV–2007 program will be available after midnight on September 30, 2007 under any circumstances.

16. Will applicants who are not selected be informed?

No, applicants who are not selected will receive no response to their entry. Only those who are selected will be informed. All winning notification letters are sent through regular mail by the Kentucky Consular Center within about five to seven months from the end of the application period to the address indicated on the entry. Since there is no notification provided to those not selected, anyone who does not receive a letter about five to seven months from the end of the registration period should assume that his or her application has not been not been selected.

17. How many applicants will be selected?

There are 50,000 DV visas available for DV–2007, but more than that number of individuals will be selected. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected by the State Department to ensure that all of the available DV visas are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected. All applicants who are selected will be informed promptly of their place on the list. Interviews with those selected will begin in early October 2006. The Kentucky Consular Center will send appointment letters to selected applicants four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Each month visas will be issued, visa number availability permitting, to those applicants who are ready for issuance during that month. Once all of the 50,000 DV visas have been issued, the program for the year will end. In principle, visa numbers could be finished before September 2007. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Random selection by the State Department computer does not automatically guarantee that you will receive a visa.

18. Is there a minimum age for applicants to apply for the DV Program?

There is no minimum age to apply for the program, but the requirement of a high school education or work

experience for each principal applicant at the time of application will effectively disqualify most persons who are under age 18.

19. Are there any fees for the DV Program?

There is no fee for submitting an entry. A special DV case processing fee will be payable later by persons whose entries are actually selected and processed at a U.S. consular section for this year's program. DV applicants, like other immigrant visa applicants, must also pay the regular visa fees at the time of visa application.

Details of required fees will be included with the instructions sent by the Kentucky Consular Center to applicants who are selected.

20. Are DV applicants specially entitled to apply for a waiver of any of the grounds of visa ineligibility?

No. Applicants are subject to all grounds of ineligibility for immigrant visas specified in the Immigration and Nationality Act. There are no special provisions for the waiver of any ground of visa ineligibility other than those ordinarily provided in the Act.

21. May persons who are already registered for an immigrant visa in another category apply for the DV Program?

Yes, such persons may apply for the DV program.

22. How long do applicants who are selected remain entitled to apply for visas in the DV Category?

Persons selected in the DV–2007 lottery are entitled to apply for visa issuance only during fiscal year 2007, *i.e.*, from October 2006 through September 2007. Applicants must obtain the DV visa or adjust status by the end of the Fiscal Year (September 30, 2007). There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas during FY–2007. Also, spouses and children who derive status from a DV–2007 registration can only obtain visas in the DV category between October 2006 and September 2007. Applicants who apply overseas will receive an appointment letter from the Kentucky Consular Center four to six weeks before the scheduled appointment.

23. When will EDV Entry Form online be available?

Online entry will become available at 12 noon e.s.t. (GMT – 5) on October 5, 2005 and will end at 12 noon e.s.t. (GMT – 5) on December 4, 2005.

24. Will I be able to download and save the EDV Entry Form to a Microsoft Word Program (or other suitable program) and then fill it out?

No, you will not be able to save the form into another program for completion and submission later. The EDV Entry Form is a Web form only. This makes it more ''universal'' than a proprietary word processor format. Additionally, it does require that the information be filled in and submitted while on-line.

25. If I don't have access to a scanner, can I send photos to my relative in the U.S. to scan the photos, save the photos to a diskette, and then mail the diskette back to me to apply?

Yes, this can be done as long as the photo meets the photo requirements in the instructions, and the photo is electronically submitted with, and at the same time the EDV Entry Form online entry is submitted. The applicant must already have the scanned photo file when they submit the entry on-line. The photo cannot be submitted separate from the online application. Only one on-line entry by or for each person can be submitted. Multiple submissions will disqualify the entry for that person for DV–2007. The entire entry (photo and application together) can be submitted electronically from the United States.

26. Can I save the form on-line so that I can fill out part and then come back later and complete the remainder?

No, this cannot be done. The EDV Entry Form is designed to be completed and submitted at one time. However, because the form is in two parts, and because of possible network interruptions and delays, the EDV Entry Form system is designed to handle up to sixty (60) minutes between downloading of the form and when the entry is received at the EDV Entry Form website after being submitted online. If more than sixty minutes elapses, and the entry has not been electronically received, the information received so far is discarded. This is done so that there is no possibility that a full entry could accidentally be interpreted as a duplicate of a previous partial entry. For example, suppose an applicant with a wife and child sends a filled in EDV Entry Form Part One and then receives Form Part Two, but there is a delay before sending Part Two because of trouble finding the file that holds the child's photograph. If the filled in Form Part Two is sent by the applicant and received by the Electronic Diversity Visa website within sixty (60) minutes then there is no problem, but if the Form Part Two is received after sixty (60) minutes has elapsed then the applicant will be informed that they need to start over for the entire entry. The DV–2007 instructions explain clearly and completely what information needs to be gathered to fill in the form. This way you can be fully prepared, making sure you have all of the information needed, before you start to complete the form online.

27. If the submitted digital images do not conform to the specifications, the procedures state that the system will automatically reject the EDV Entry Form and notify the sender. Does this mean I will be able to re-submit my entry?

Yes, the entry can be resubmitted. Since the entry was automatically rejected it was not actually considered as submitted to the Electronic Diversity Visa Web site. It does not count as a submitted Electronic Diversity Visa entry, and no confirmation notice of receipt is sent. If there are problems with the digital photograph sent because it does not conform to the requirements, it is automatically rejected by the Electronic Diversity Visa Web site. However, the amount of time it takes the rejection message to reach the sender is unpredictable due to the nature of the Internet. If the problems can be fixed by the applicant, and the Form Part One or Two re-sent within sixty (60) minutes then there is no problem. Otherwise the submission process will have to be started over. An applicant can try to submit an application as many times as is necessary until a complete application is sent and the confirmation notice is received.

28. Will the electronic confirmation notice that the completed EDV Entry Form has been received through the online system be sent immediately after submission?

The response from the Electronic Diversity Visa Web site which contains confirmation of the receipt of an acceptable EDV Entry Form is sent by the Electronic Diversity Visa Web site immediately, but how long it takes the response to reach the sender is unpredictable due to the nature of the Internet. If many minutes have elapsed since pressing the ''Submit'' button there is no harm in pressing the ''Submit'' button a second time. The Electronic Diversity Visa system will not be confused by a situation where the ''Submit'' button is hit a second time because no confirmation response has been received. An applicant can try to submit an application as many times as is necessary until a complete application is sent and the confirmation notice is received.

List of Countries by Region Whose Natives Qualify

The lists below show the countries whose natives are qualified within each geographic region for this Diversity Program. The determination of countries within each region is based on

information provided by the Geographer of the Department of State. The countries whose natives do not qualify for the DV–2007 program were identified by the U.S. Citizenship and Immigration Services (USCIS) according to the formula in Section 203(c) of the Immigration and Nationality Act. Dependent areas overseas are included within the region of the governing country. The countries whose natives do not qualify for this Diversity Program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration, or ''high admission'' countries) are noted after the respective regional lists.

Africa

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Congo, Democratic Republic of the, Cote D'Ivoire (Ivory Coast), Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, The, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

Asia

Afghanistan, Bahrain, Bangladesh, Bhutan, Brunei, Burma, Cambodia, East Timor, Hong Kong Special Administrative Region, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kuwait, Laos, Lebanon, Malaysia, Maldives, Mongolia, Nepal, North Korea, Oman, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Taiwan, Thailand, United Arab Emirates, Yemen.

Natives of the following Asian countries do not qualify for this year's Diversity Program: China [mainland-born], India, Pakistan, South Korea, Philippines, and Vietnam. The Hong Kong S.A.R and Taiwan do qualify and are listed above. Macau S.A.R. also qualifies and is listed below.

Europe

Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark (including components and dependent areas overseas), Estonia, Finland, France (including components and dependent areas overseas), Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macau Special Administrative Region, Macedonia, the Former Yugoslav Republic, Malta, Moldova, Monaco, Netherlands (including components and dependent areas overseas), Northern Ireland, Norway, Portugal (including components and dependent areas overseas), Romania, San Marino, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan, Vatican City.

Natives of the following European countries do not qualify for this year's Diversity Program: Great Britain, Poland and Russia. Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands. Note that for purposes of the Diversity Program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

North America

The Bahamas.

In North America, natives of Canada and Mexico do not qualify for this year's Diversity Program.

Oceania

Australia (including components Palau and dependent areas overseas), Fiji, Kiribati, Marshall Islands, Micronesia, Federated States of, Nauru, New Zealand (including components and dependent areas overseas), Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, Samoa.

South America, Central America, and The Caribbean

Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Chile, Costa Rica, Cuba, Dominica, Ecuador, Grenada, Guatemala, Guyana, Honduras, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Countries in this region whose natives do not qualify for this year's Diversity Program: Colombia, Dominican Republic, El Salvador, Haiti, Jamaica, and Mexico.

Dated: September 29, 2005.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 05–19982 Filed 10–4–05; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 16, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–22228, OST–2005–22462.

Date Filed: September 13, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 2005.

Description: Application of Air Wisconsin Airlines Corporation, requesting a certificate of public convenience and necessity from any point in the United States to any point in Canada and related integration authority pursuant to the notice issued by the Department of Transportation on August 26, 2005.

Docket Number: OST–2005–22467.

Date Filed: September 13, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 4, 2005.

Description: Joint application of Empire Airlines, Inc. and Northern Air Cargo, Inc., requesting a disclaimer of jurisdiction, or, in the alternative, approval of the de facto transfer of certain international certificate authority currently held by NAC pursuant to 49 U.S.C. 41105.

Docket Number: OST–2005–22506.

Date Filed: September 16, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 7, 2005.

Description: Application of Republic Airlines Inc. d/b/a Republic Airlines, requesting an exemption and a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property

and mail between points in the United States and points in Canada.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–19964 Filed 10–4–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Senior Executive Service; Financial Management Service Performance Review Board (PRB)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).

DATES: This notice is effective on October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC; telephone (202) 874–7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice is given of the appointment of individuals to serve as members of the FMS PRB. This Board reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Four voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:

Primary Members

Kenneth R. Papaj, Deputy Commissioner;
Nancy C. Fleetwood, Assistant Commissioner, Information Resources;
Gary Grippo, Assistant Commissioner, Federal Finance;
James M. Mills, Assistant Commissioner, Debt Management Services;
Judy Tillman, Assistant Commissioner, Regional Operations.

Alternate Members

Scott Johnson, Assistant Commissioner, Management (Chief Financial Officer);
Kerry Lanham, Assistant Commissioner, Agency Services;
Wanda Rogers, Assistant Commissioner, Financial Operations;
Donald J. Sturgill, Assistant Commissioner, Governmentwide Accounting Operations.

Dated: September 29, 2005.

Kenneth R. Papaj,

Deputy Commissioner.

[FR Doc. 05–19900 Filed 10–4–05; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0610]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to designate an ecclesiastical endorsing official.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 5, 2005.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *ann.bickoff@hq.med.va.gov.* Please refer to ''OMB Control No. 2900–0610'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or fax (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Ecclesiastical Endorsing Organization, Request to Designate Ecclesiastical Endorsing Official, VA Form 10–0379.

OMB Control Number: 2900–0610.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 10–0379 is used to assure that individuals employed by VA as chaplains are qualified to provide for the constitutional rights of veterans to free exercise of religion. Each applicant is required to submit an official statement (''ecclesiastical endorsement'') from their religion or faith group, certifying that they are in good standing with the faith group and are qualified to perform the full range of ministry required in a VA setting. VA uses this information to determine: (1) Who the faith group designates as its endorsing official(s); (2) whether the faith group provides ministry to a lay constituency; and (3) what is the constituency to which persons endorsed by this group may minister.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 8 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10.

Dated: September 22, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 05–19888 Filed 10–4–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 192

Wednesday, October 5, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Correction

In notice document 05–13531 beginning on page 39796 in the issue of Monday, July 11, 2005, make the following correction:

On page 39796, in the third column, in the last line ''(69 FR 35913)'' should read ''(68 FR 35913)''.

[FR Doc. C5–13531 Filed 10–4–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21170; Directorate Identifier 2002–NM–124–AD; Amendment 39-14298; AD 2005–20–05]

RIN 2120–AA64

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

Correction

In rule document 05–19227 beginning on page 56821 in the issue of Thursday, September 29, 2005 make the following correction:

§ 39.13 [Corrected]

On page 56823, in §39.13(a), in the first column, under the heading **Effective Date**, ''October 31, 2005,'' should read, ''November 3, 2005.''

[FR Doc. C5–19227 Filed 10–4–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
October 5, 2005

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

Medicaid Program and State Children's Health Insurance Program (SCHIP) Payment Error Rate Measurement; Interim Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 457

[CMS–6026–IFC]

RIN 0938–AN77

Medicaid Program and State Children's Health Insurance Program (SCHIP) Payment Error Rate Measurement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule sets forth the State requirements to provide information to us for purposes of estimating improper payments in Medicaid and the State Children's Health Insurance Program (SCHIP), as required under the Improper Payments Information Act (IPIA) of 2002. The IPIA requires heads of Federal agencies to annually estimate and report to the Congress these estimates of improper payments for the programs they oversee and, submit a report on actions the agency is taking to reduce erroneous payments. We published a proposed rule on August 27, 2004 to propose that States measure improper payments in Medicaid and SCHIP and report the State-specific error rates to us for purposes of computing the improper payment estimates for these programs.

After extensive analysis of the issues related to having States measure improper payments in Medicaid and SCHIP, including public comments on the provisions in the proposed rule, we are revising our proposed approach. Our new approach incorporates commenters' suggestions to engage a Federal contractor by contracting with that entity to complete the data processing and medical reviews and calculate the State-specific error rates. Based on the States' error rates, the contractor also will calculate the improper payment estimates for these programs which will be reported by the Department of Health and Human Services as required by the IPIA. This interim final rule sets out the types of information that States would need to submit to allow CMS to conduct medical and data processing reviews on claims made in the fee-for-service (FFS) setting. CMS will address estimating improper payments for Medicaid managed care and eligibility and SCHIP FFS, managed care and eligibility at a later time.

This rule responds to the public comments on the proposed rule, sets forth the requirements for States to assist us and the contractor to produce State-specific error rates in Medicaid and SCHIP which will be used as the basis for a national error rate, and outlines future plans for measuring eligibility, which may include greater State involvement than the level required for the medical and data processing reviews.

DATES: *Effective date:* These regulations are effective on November 4, 2005.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on November 4, 2005.

ADDRESSES: In commenting, please refer to file code CMS–6026–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments*. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular 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–6026–IFC, PO Box 8012, Baltimore, MD 21244–8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send 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–6026–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *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.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Christine Jones, (410) 786–3722; or Janet E. Reichert, (410) 786–4580.

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–6026–IFC 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. We post 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.]

The Improper Payments Information Act of 2002 (IPIA), Public Law 107–300,

enacted on November 26, 2002, requires the heads of Federal agencies to review annually programs they oversee that are susceptible to significant erroneous payments to estimate the amount of improper payments, to report those estimates to the Congress, and to submit a report on actions the agency is taking to reduce erroneous expenditures. The IPIA directed the Office of Management and Budget (OMB) to provide subsequent guidance. OMB defines significant erroneous payments as annual erroneous payments in the program exceeding both 2.5 percent of program payments and $10 million (OMB M–03–13, 05/21/03). For those programs with significant erroneous payments, Federal agencies must provide the estimated amount of improper payments and report on what actions the agency is taking to reduce them, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached.

In the report to the Congress, Federal agencies must include: (1) The estimate of the annual amount of erroneous payments; (2) a discussion of the causes of the errors and actions taken to correct those causes; (3) a discussion of the amount of actual erroneous payments the agency expects to recover; and (4) limitations that prevent the agency from reducing the erroneous payment levels, that is, resources or legal barriers.

The Medicaid and SCHIP programs were identified by OMB as programs at risk for significant erroneous payments. OMB has directed the Department of Health and Human Services (DHHS) to report the estimated error rate for the Medicaid and SCHIP programs to OMB by November 15 of each year.

There currently is no systematic means of measuring payment errors at the State and national levels for Medicaid and SCHIP. Through the Payment Accuracy Measurement (PAM) and Payment Error Rate Measurement (PERM) pilot projects that operated in Fiscal Years (FYs) 2002 through 2005, we determined that it is feasible to estimate improper payments for Medicaid and SCHIP and refined a claims-based review methodology. This methodology was designed to estimate State-specific payment error rates within +/−3 percent of the true population error rate with 95 percent confidence. Moreover, through weighted aggregation, the State-specific estimates can be used to make national level error rate estimates for Medicaid and SCHIP that meet OMB's confidence and precision requirements.

Since Medicaid and SCHIP are administered by State agencies according to each State's unique program characteristics, State participation in estimating improper payments was critical during the pilot projects and continues to be necessary and important for the Secretary to comply with the requirements of the IPIA. Obtaining and considering State input in IPIA requirements has necessarily been time-consuming; however, the end result is an interim final rule with comment period that is more responsive to our stakeholders' concerns.

II. Provisions of the Proposed Rule

We published a proposed rule on August 27, 2004 (69 FR 52620) that contained provisions for all States to annually estimate total improper payments in Medicaid and SCHIP. Based on medical, data processing, and eligibility reviews on a monthly random selection of a total of approximately 800 to 1,200 fee-for-service (FFS) and managed care claims (stratified between the components) each for Medicaid and SCHIP, States would produce and report to us State-specific payment error rates in Medicaid and SCHIP. We would then calculate a national error rate for these programs. States would take actions to address causes of errors identified through the claims reviews. States also would submit an annual report to us detailing the causes of errors and specifying actions to be taken to reduce the level of improper payments. The process for recoveries of improper payments under Medicaid is already set in statute. States must return the Federal share of overpayments identified through the medical and data processing reviews of the sampled claims within 60 days in accordance with existing statutory and regulatory requirements governing recoveries (section 1903(d)(2) of the Social Security Act (Act) and 42 CFR part 433, subpart F). Recoveries of the Federal share of improper payments based on eligibility errors are subject to the provisions of section 1903(u) of the Act and related regulations at 42 CFR part 431, subpart P.

The intended effect of the proposed rule was to have States measure improper payments, to target corrective actions in response to identified errors, to reduce the rate of improper payments, and to produce a corresponding increase in program savings at both the State and Federal levels. The proposed rule would have allowed us to comply with the IPIA requirements.

This rule is being promulgated as interim final with comment period due to the significant departure in the approach to estimate improper payments in Medicaid and SCHIP by engaging a Federal contractor rather than requiring States to produce error rates. We plan to publish a final rule that responds to comments made on this interim final rule. We expect the determination of the eligibility error rate to require State participation and seek comments through this interim final rule on how such a rate could best be calculated within current Medicaid and SCHIP laws and regulations, and with minimal imposition on State resources. We anticipate producing a Medicaid FFS error rate for the FY 2007 Performance and Accountability Report (PAR) based on reviews conducted in FY 2006. In FY 2007, we expect to measure improper payments in the FFS, managed care and eligibility components of Medicaid and SCHIP to be reported in the FY 2008 PAR. We are also seeking comments on how best to determine an error rate for managed care in Medicaid and SCHIP.

III. Analysis and Response to Public Comments on the Proposed Rule

Public comments on the proposed rule expressed concerns predominantly with the cost and burden that States would incur and the potential adverse effect that error rate measurement could have on beneficiaries' access to care. Although many commenters supported the general need for program integrity, they offered alternatives that they believed would better achieve compliance with the IPIA requirements. Many commenters made the following recommendations to allow us to achieve compliance with IPIA by other means:

- Utilize national sampling using Medicaid Statistical Information System (MSIS) data.
- Pool State-specific data across the years, or accept larger standard errors to generate a national estimate, particularly for SCHIP.
- Use the Medicaid Eligibility Quality Control (MEQC) program as a sampling process. States could change their sampling methodology from case to claim, stratify the claims and sample monthly to determine eligibility and perform a medical review. Regulations for MEQC are in place and implementing the additional requirements within an existing structure would be easier. The MEQC error rates could also be used to produce a national eligibility error rate to prevent the redundancy of conducting PERM and MEQC, along with minimizing financial burdens.
- Use existing State methodologies and compare them to the results of other samples to determine whether they contribute to the goal of a national program error rate.

- Hire a Federal contractor.
- Use gathered information to provide technical assistance to States to improve program integrity, rather than penalize States.

We considered all of the recommendations and adopted several of the recommendations. The new approach to error rate measurement will rely on a Federal contractor to conduct medical and data processing reviews and produce State-specific and national Medicaid and SCHIP error rates. The contractor will sample selected States each year to estimate improper payments in Medicaid and SCHIP and create a national error rate. We have not made a final determination about how eligibility errors will be measured. It is likely, however, that States would be active participants in this process. For example, though several options remain under consideration, it is possible that the States sampled for the medical and data processing reviews would be required to test for eligibility errors in a manner similar to that presented in the proposed rule.

We did not adopt the other recommendations, either because they would not achieve compliance with OMB guidance, or because we believed that they were not the best methods to meet the requirements of OMB guidance. We did not adopt the first recommendation because there is no national sampling frame for SCHIP claims, and the MSIS data for Medicaid are too old to produce meaningful data on which States could base effective corrective actions. Pooling State-specific data across the years or accepting larger standard errors to generate a national estimate would not generate an error rate that was based on an annual standardized measurement of improper payments and therefore would not provide a basis on which an annual national error rate that was compliant with OMB guidance could be calculated. Although accepting State samples with larger standard errors may produce a national error rate that was compliant with OMB guidance, those estimates would not provide the States with sufficient information to identify vulnerabilities and to implement corrective actions. We also did not adopt the recommendation to use MEQC as a sampling process because the MEQC statute does not apply to SCHIP stand-alone programs under Title XXI. Also, many States have their MEQC programs attached to the section 1115 research and demonstration waivers that, while allowing them the flexibility to tailor their eligibility oversight efforts, have the effect of preventing comparability and aggregation for a national rate.

We also did not adopt the recommendation to use existing States' methodologies to produce a national program error rate. Commenters stated that, in addition to MEQC, States use the Surveillance and Utilization Review System (SURS), program integrity, and checks and balances in the claims processing systems and suggested that the States submit proof of program savings that equaled a percentage of the program's current costs. We believe this recommendation would not result in a standardized approach since the information that States would submit would be based on varying methodologies and that submitting cost savings information is not a measurement of improper payments, as required by IPIA. Also, not all States may apply these systems to SCHIP. Therefore, this approach may not produce a national error rate that would meet the confidence and precision requirements contained in OMB guidance. The proposed rule did not provide for States to be penalized through this error rate measurement. Finally, we are always available to provide technical assistance to States.

After consideration of the proposed alternatives, we are adopting the recommendations to hire a Federal contractor to conduct the medical and data processing reviews and calculate the State-specific and national error rates for Medicaid and SCHIP. We also are adopting the recommendation to sample a subset of States each year. Each State will have a State-specific error rate which will be the basis for a national error rate. Adopting these recommendations addresses commenters' concerns with State cost and burden.

By FY 2008, we hope to be compliant with the IPIA requirements by producing error rates for both Medicaid and SCHIP FFS, managed care and eligibility. In FY 2006, we will use a Federal contractor to estimate improper payments from medical and data processing reviews in the fee-for-service component of Medicaid and establish a workgroup to make recommendations on the best approach for reviewing Medicaid and SCHIP eligibility, within the confines of current statute and with minimal budgetary impact for purposes of meeting IPIA requirements to measure improper payments based on payments to ineligibles.

Under the national contracting strategy, a number of States will be selected for review. In FY 2006, the Federal contractor will group all States into three equal strata of small, medium and large based on States' annual FFS Medicaid expenditures from the previous year, and select a random sample of an estimated 18 States to be reviewed. The error rates produced by this selection methodology will provide the State with a State-specific error rate estimated to be within 3 percent precision at the 95 percent confidence level. For subsequent years, our sampling methodology will ensure that each State will be selected once, and only once, every 3 years for each program.

The States selected for review will submit the previous year's claims data and expenditure data, not otherwise already provided by CMS, on which the contractor will determine each State's sample size and the sample size for each stratum. The strata we are considering are: (1) Hospital services; (2) long term care services; (3) other independent practitioners and clinics; (4) prescription drugs; (5) home and community based services; (6) other services and supplies, for example, labs, x-rays; (7) primary care case management; and (8) denied claims. These States also will submit quarterly stratified claims data to the contractor who will pull a statistically valid random sample, each quarter, by strata and medical and data processing reviews will be performed. State-specific error rates will be based on the results of these reviews.

In FY 2006, contingent on available funding, we plan to estimate improper payments in the FFS component of Medicaid. In FY 2007, we expect to measure improper payments in both the FFS and managed care components of Medicaid and SCHIP. We will measure the error rate in each component (FFS and managed care) separately due to their differing nature. For example, FFS has a wide variance in payments amounts, whereas managed care payments do not. We expect to be able to produce the Medicaid and SCHIP FFS, managed care and eligibility national error rates for reporting in the FY 2008 PAR to the Congress.

We received a total of 121 comments: 43 from State agencies and 78 from consumer advocacy and other groups. Overall, commenters expressed concern with the proposed methodology for measuring improper payments, although many also expressed support for the general need for program integrity. Areas of greatest concern were burden and cost, the requirement for States to construct error rates to meet a legal requirement imposed on Federal agencies, and the impact on beneficiaries. States did not believe the proposed rule's methodology would be

cost-effective or realize savings. Some States and the advocacy groups were concerned that the proposed methodology would have an adverse effect on access to care as States increased or imposed new requirements on applicants for documented proof of eligibility to avoid errors. Following are the comments on the proposed rule, grouped by topic, and our responses.

A. Purpose and Basis

Comment: Many commenters expressed concern with the cost and burden that the proposed rule would have imposed on States, particularly since they believe the IPIA imposes the requirement to measure improper payments on Federal agencies rather than the States. States are also concerned that:

- Critical staff would need to be diverted to perform the reviews;
- It would be difficult to implement corrective actions while measuring error rates at the same time;
- The rule places an added burden on States at a time when some are struggling to maintain and expand coverage to currently uninsured individuals; and,
- Forces States to shift funds from other programs. Providers need the States to invest additional resources in provider outreach, education, and resource material that would improve the entire system, not to shift funds away from activities to calculate error rates.

The commenters stated that, if States must estimate improper payments in Medicaid and SCHIP, these activities should be fully federally funded.

Response: We agree that the IPIA imposes the requirement on Federal agencies rather than the States to measure improper payments. Although Medicaid and SCHIP are jointly funded by the Federal and State governments, the programs are fully administered and operated by the States. Also, there is wide variation in States' Medicaid and SCHIP programs due to the flexibility States have in developing the coverage, benefit, and reimbursement aspects of the programs. As a result, we must measure improper payments on a State-specific basis in order to produce a national payment error rate.

Regarding the cost and burden that the proposed rule would have imposed on States, our adoption of the commenters' recommendation to engage a Federal contractor to estimate a component of improper payments significantly reduces the cost and burden and addresses this concern. States will not pay for the national contractor. In addition, only those States selected for review each year will provide information necessary for claims sample selections and reviews, will provide technical assistance as needed, and will implement and report on the corrective actions to reduce the error rate. The States will be reimbursed for these activities at the applicable administrative Federal match under Medicaid and SCHIP. As part of the rulemaking process, we have evaluated the burden and impact that these responsibilities will have on States and determined that there was significantly less impact on States and providers. We plan to measure SCHIP FFS, managed care and eligibility in FY 2007, and we acknowledge that the 10-percent cap on SCHIP administrative expenditures could be a concern in the future, particularly depending on the nature of reviews necessary to produce SCHIP eligibility error rates. Though the burden and cost States would bear for eligibility testing in both Medicaid and SCHIP fee-for-service and managed care remains uncertain, the eligibility workgroup will make every effort to minimize both while establishing a useful and worthwhile methodology.

Finally, due to the minimal additional activity required by the regulation, we believe that States selected for review should not need to divert staff from other areas of program activities.

Comment: Some commenters stated that the proposed rule goes beyond the requirements of law and lacks details needed for States to determine requirements and resource commitments. A few commenters recommended that CMS postpone the proposed rule until more details could be given or revise the regulation to establish key principles to make the reviews fair and accurate based on public comment.

Response: The Federal contractor's responsibility for medical and data processing reviews should lift a substantial portion of the burden from States. Since Medicaid and SCHIP are partnerships between the Federal and State governments, we will rely on States' assistance throughout the error measurement process. This interim final rule provides the opportunity for States and other interested parties to comment on the States' responsibilities in this revised approach.

Additionally, we will request that some States and/or their representatives be part of the eligibility workgroup. We look forward to their input and participation as we continue through the process.

Comment: A few commenters were highly supportive of the proposed rule and recommended that any modification to the rule focus on the measurement of monies lost to fraud and abuse. The commenters emphasized prevention strategies centered on education, data mining, prospective flags, as well as recovery of erroneous payments and cooperation with law enforcement to facilitate criminal prosecution.

Response: We are not adopting this recommendation. We currently conduct fraud and abuse oversight activities, which include data analysis through the Medicare-Medicaid data match, to identify potential fraud and abuse. Other activities, such as education, prospective flags, recovery of erroneous payments, and cooperation with law enforcement are currently conducted at the State level. We believe additional actions are not necessary at this time.

Comment: Several commenters urged CMS to reconsider its proposal and develop a system under which the error reporting requirements are clear and identical for all States. They are concerned that differing State rules for reviews will contribute to the administrative burden and potential inefficiencies in the system, especially for providers operating facilities in many States.

Response: We have reconsidered our approach and believe this strategy will provide more standardized measures across States. The States' requirements for the medical and data processing reviews are clearly stated in this regulation text, and the public is afforded the opportunity through this rule to comment on them.

Any additional State requirements will be described in a proposed rule with an opportunity for public comment. We invite comments on how a system that relies, in part, on State measurement could be standardized across States.

Comment: A few commenters stated that some States should be given special consideration such as States that have limited or no previous error rate experience; and CMS should exclude States with SCHIP minimal allotments, similar to excluding the Territories due to minimal funding.

Response: State burden and cost are significantly reduced under this revised strategy, so we believe the basis to consider excluding States with small SCHIP allotments no longer exists. Therefore, we are not adopting this recommendation.

Comment: A few States inquired as to: (a) the legal obligation of States to institute payment error rate measurement; and (b) the consequences if a State could not comply with the regulatory requirements.

Response: Current law at section 1102 of the Act authorizes the Secretary to establish regulations as may be necessary for the efficient administration of the Medicaid and SCHIP programs. The Medicaid statute at section 1902(a)(6) of the Act, and the SCHIP statute at section 2107(b)(1) of the Act, require States to provide information necessary for the Secretary to monitor program performance. Section 1902(a)(27) of the Act requires providers also to submit information as requested by the Secretary. These statutory provisions provide the bases for requiring States and providers to submit information needed to produce Medicaid and SCHIP error rates. Regarding compliance, the regulations that govern State compliance with Federal requirements in Medicaid and SCHIP are 42 CFR 430.35 and 457.204, respectively. Under these regulations, the Administrator has the discretion to enforce the compliance regulations by withholding Federal matching funds in whole or in part until a State complies with Federal requirements.

Comment: Some commenters stated that savings will not be realized since the cost of conducting error rate measurement will exceed savings.

Response: The IPIA requires error rate measurement for these programs and does not include lack of cost savings as a reason for not measuring improper payments. Since we are estimating improper payments in a select number of States through a Federal contracting strategy, we believe the State cost to measure error rates has been drastically reduced. We will analyze the cost/savings benefits when we have reliable findings, but we anticipate that savings will be realized over time through efficiencies gained by experience in estimating error rates, through disseminating findings from selected States, States' corrective action measures, and modeling best practices.

Comment: A few commenters recommended that payment error rate measurement use a claims-based sampling methodology and be administered electronically, since a paper-based model would prove burdensome to States and providers and could lead to lower provider response rates.

Response: The proposed rule provided for a claims-based sampling methodology as does the interim final rule for the medical and data processing reviews. Since States and providers have different levels of systems sophistication, the contractor will work with States to determine the format for States to submit information.

Comment: A number of commenters believe that working with Medicaid and SCHIP will be more difficult for providers because of increasing paperwork burdens, higher rates of denied claims, delays in payments, and sanctions.

Response: The providers who would submit medical documentation to support the medical reviews are participating providers in Medicaid and/or SCHIP. We have analyzed the cost and burden on providers as part of this rule and determined that there will not be a significant cost or impact. We believe we have further minimized the burden on providers nationwide by reviewing only a selection of States rather than all States every year. Also, providers only need to submit medical records for FFS claims since managed care claims are not subject to medical reviews.

Comment: Several commenters were concerned that the proposed rule would place a unique burden on providers who serve a disproportionately large share of Medicaid and SCHIP enrollees. The negative impact of additional time and practice cost that would be required of providers to respond to requests for medical records and error rate measurement efforts should be considered as the final rule is drafted.

Response: As stated above, we have analyzed the burden on providers as part of this rule. We believe that utilizing a sample of States will reduce the burden on providers nationwide since only those Medicaid and SCHIP providers in States selected for review will submit medical records and, in each State, only providers whose FFS claims were selected would need to submit records, as managed care claims are not subject to medical review.

Comment: A few commenters wanted to know what would be considered an acceptable State error rate percentage.

Response: Unlike the statute at section 1903(u) of the Act which sets a 3-percent error rate tolerance for Medicaid eligibility errors before a disallowance of the Federal share of improper payments can be imposed, the IPIA and subsequent OMB guidance does not set a State-specific error rate percentage. IPIA is merely a reporting requirement; it neither penalizes nor rewards States for acceptable or unacceptable error rates. However, States would still be required to reimburse CMS for the Federal portion of all improper payments identified through the medical and data processing reviews.

Comment: A few commenters suggested that CMS develop an internal taskforce to review the progress of the States in implementing payment error rate measurement, including CMS regional office representatives. The taskforce could seek feedback from stakeholders on the process for improvements in moving forward.

Response: Since we are engaging a Federal contractor rather than the States to produce error rates, the recommendation to convene a taskforce to track States' progress on medical and data processing reviews no longer applies. However, the eligibility workgroup may decide to have a taskforce track States' progress on the eligibility reviews, when implemented.

B. Definitions

Comment: A few commenters recommended replacing the definition of ''total estimated improper payments'' with a definition of ''Federal estimated improper payments'' that is based on the Federal share of improper payments, as computed using the appropriate Federal matching rate for Medicaid or SCHIP.

Response: We agree with the commenter that the IPIA and OMB guidance refer only to Federal improper payments. We have deleted this definition from the interim final rule.

C. Claims Universe and Sampling

1. Exclusions From the Universe

a. Denied Claims

Comment: Many commenters objected to the inclusion of denied claims in the sampling process. They believe that a denied claim is not included in the IPIA definition of improper payment as defined in the IPIA or the proposed rule. Some commenters questioned OMB's interpretation of an improper payment which includes denied claims. Some commenters stated that denied claims are not improper payments since payments have not actually been made.

Response: The IPIA defines improper payment as ''any payment that should not have been made or that was made in an incorrect amount including overpayments and underpayments.'' OMB guidance M–03–13, published May 21, 2003, states that ''incorrect amounts are overpayments and underpayments including inappropriate denials or payment of service.'' Therefore, we must include denied claims in the error rate measurement process.

Comment: Some commenters stated it may be difficult for States to find a standard definition of denied claim and wanted to know whether the amount of a denied claim should be a zero amount or the amount billed.

Response: A denied claim is a claim or line item that was submitted by a provider for services furnished, was accepted by the claims processing or payment system, was adjudicated for payment, and was not approved for payment. The amount of a denied claim when part of the universe for sampling purposes is zero dollars. The amount of improper payment, if a claim was denied erroneously, would be the amount that should have been paid as a result of the review.

Comment: Some commenters asked what documentation supports a denied claim. States may not have the authority to demand a medical record for a denied claim.

Response: Documentation to support a denied claim depends on the reason the claim was denied. For example, if the reason for the denial was based on the claims processing, a processing review would be done to verify the denial. If the reason for the denial was medically based, a medical record would support whether or not the claim was correctly denied. If the provider does not submit the record or if the submitted record does not substantiate the service billed, then the denial would be correct. Since we are utilizing a Federal contractor, States will not be requesting medical records for denied claims, so this point is no longer applicable.

Comment: Some commenters asked what would constitute an adjustment to a denied claim (similar to when a paid claim is adjusted to, for example, correct the billing amount or coding) and whether it would be possible to identify these adjustments to claims denied for payment.

Response: Denied claims are not subject to adjustments because, when a claim is denied for payment, the provider will resubmit a new claim for payment. The claim resubmitted for payment would not be associated with the claim that was originally denied. Therefore, adjustments to denied claims are not included in this interim final rule.

Comment: Some commenters stated that inclusion of denied claims will affect the precision levels. Denied claims have a greater chance of selection since a large portion will reappear in the universe as a paid claim. They inquired why denied claims will be used to increase the amount of misspent dollars.

Response: Denied claims include claims accepted by the claims processing or payment system, adjudicated for payment and not approved for payment. This definition excludes many or most of the types of claims that are rejected from the claims payment system, corrected and resubmitted, and ultimately approved for payment. This reduces the chance that a claim for a single service would show up in the sample as both a denial and a paid claim. The inclusion of denials is consistent with guidance from OMB, which has stated that improper payments include inappropriate denials of payment or service.

Comment: Some commenters questioned how an error rate would be determined for a denied claim specifically inquiring as to the nature of the numerator and denominator.

Response: There are multiple approaches for including denials in the error rate. If denials are included as a separate stratum, the ''difference'' version of the error rate calculation would be applied. Errors from denials are included in the total error rate, projected to the population or universe using the inverse of the sampling frequency. In the denominator, the non-stochastic (that is, deterministic) value of all line items paid over the sampling period is included, and denials enter the denominator as zero.

Comment: Some commenters asked what denial explanation of benefits will be used to identify denied claims that will be included or excluded from the universe.

Response: All denied claims are included in the universe. Therefore, it is not necessary to categorize denials based on the explanation of benefits.

Comment: Some commenters asked if eligibility determinations will need to be conducted on denied claims.

Response: If a claim is denied on the basis that the person is not eligible, we believe an eligibility review should be done to confirm the claim was correctly denied. This issue is likely to be considered by the eligibility workgroup.

b. Medicare Claims and Other Premium Payments

Comment: Some commenters stated that it was not clear if Medicare crossover claims were included in the proposed rule methodology.

Response: We believe the commenter defines crossover claims as payment authorization for Medicare coinsurance and deductible amounts. The proposed rule intended to include Medicare crossover claims in the reviews since these are considered part of the universe of claims. The universe includes all claims submitted by providers, insurers, and managed care organizations for which a decision to pay or deny was made by Medicaid or SCHIP. Under this interim final rule, these claims would be included in the universe and subject to sampling and review to the same extent as any other claim.

Comment: A few commenters stated that Medicare crossover claims should be excluded because the buy-in claims are paid directly to a Federal agency and have the unintended outcome of having States determine the accuracy of Medicare claims, when the primary Medicare claims are already measured by CMS. The commenters stated these claims were not tested in the PAM pilots.

Response: The commenter is correct that Medicare Parts A and B crossover claims were not tested in the PAM pilots. At that time, CMS and the participating States were still refining the methodology to estimate error rates. In the FY 2005 pilot (PERM pilot), both Medicare crossover claims and denied claims were included in the reviews. Medicare crossover claims are included in the universe for sampling because they are considered Medicaid payments made to insurers, similar to Medicaid payments for employee health care premiums. This methodology measures the accuracy of the Medicaid payment on the claim rather than the accuracy of the Medicare payment.

Comment: A few commenters stated that buy-in claims should be excluded from sampling because these payments are made to a Federal agency and, furthermore, buy-in overpayments or payments made on behalf of ineligible participants are unrecoverable.

Response: Although the Medicare program is administered by a Federal agency, it is considered an insurer, as noted above. Moreover, it is immaterial whether an erroneous payment is recoverable or non-recoverable.

Comment: A few commenters stated that Parts A and B premiums are not processed as claims through MMIS and stated they believe that the sampling was intended to test claims submitted by providers and processed by the States' MMIS systems. If these claims were included, they argued other contracts with Federal match, such as disproportionate payments, rent and salary should be included.

Response: The methodology in the proposed rule would have reviewed only claims paid to providers, insurers and managed care organizations. Payments not falling within these categories would be excluded from the universe. Medicare crossover claims would be included because Medicare is considered an insurer for this purpose. We acknowledge that most claims are processed by the States' MMIS systems; however, the proposed rule did not provide for States to exclude any claims that were not processed through the

MMIS. The data processing review in the proposed rule, as well as in the revised approach discussed in this interim final rule, is intended to ensure the claim was correctly paid regardless of the system making the payment.

Comment: A few commenters stated that States may not have the necessary understanding of Medicare payment policies.

Response: Although we are available to provide technical assistance to States that do not understand Medicare payment policies, under the proposed rule, States would not be required to verify the accuracy of Medicare payments. The States would only verify that the State had paid its own portion correctly. However, since States are no longer conducting the medical or data processing reviews, this fact is no longer relevant.

Comment: A few commenters stated that ''improper payment'' needed further definition and asked what impact uncollected, incorrect, or disputed (official complaint on file) premium payments would have on the error rate (for example, for SCHIP participants who prepay a monthly premium).

Response: We believe the definition of ''improper payment'' in the proposed rule as well as this interim final rule is clear. The error rate methodology in the proposed rule would have required States to review claims to determine if the payment amount was correct. An uncollected, incorrect, or disputed premium amount in a sampled claim would have been determined to be an over-or underpayment in the amount that was either the participant's liability or the State's liability to pay, depending on the circumstances of the specific claim being reviewed.

c. Other Exclusions

Comment: A few commenters asked if FFS or managed care components with less than 10 percent of program expenditures will be excluded.

Response: For purposes of the pilot programs, we did exclude such FFS or managed care components from review but we did not anticipate in the proposed rule or in this interim final rule that components would be excluded on this basis.

2. Sampling Issues

Comment: Some commenters wanted to know if CMS had adequate staff to approve States' sample plans in a timely manner and asked that ''timely manner'' be defined.

Response: At this time, States will not need to submit sampling plans to us for approval under the national contractor approach. Should the eligibility testing require States to do any sampling, those issues would be addressed in a subsequent issuance.

Comment: A few commenters expressed concern with the large sample sizes and asked that we identify the percent of error assumed to develop the methodology. Commenters suggested that States be allowed to submit alternative sampling plans that have an equal or better precision than required.

Response: Under the proposed rule, the Federal contractor would determine the sample sizes needed to achieve the required precision levels for Medicaid and for SCHIP, which is an estimate that is within +/−3 percentage points of the true population payment error rate with 95 percent confidence. When we originally estimated the range of sample sizes to be between 800 to 1,200 for each program in each State, we did not assume a particular error rate; rather, we assumed a variance in payment size. Experience now shows that the 800–1200 sample size results in States achieving the precision level of +/−3 percent. It is important to note that the sample sizes could be larger or smaller in each State or in the SCHIP program. Since States will not need to submit sampling plans for selecting claims for medical and data processing reviews or review these claims under the national contracting strategy, we believe these concerns have been addressed.

Comment: A few commenters suggested that as a way to reduce the sample size, the Medicaid and SCHIP claims be combined or suggested that the sample sizes should not be the same for Medicaid and SCHIP.

Response: The Medicaid and SCHIP claims cannot be combined because the OMB guidance requires a statistically valid error rate that meets specified confidence and precision levels for each individual program. The sample sizes for Medicaid and SCHIP will be estimated to achieve +/−3 percent precision within 95 percent confidence. Although we estimated the Medicaid and SCHIP sample size to be within the same range, the actual sample size may or may not be the same. Combining Medicaid and SCHIP claims or arbitrarily reducing the sample sizes for either program to calculate error rates would not meet the OMB requirements.

Comment: Some commenters noted that the sample size required of the SCHIP program is the same required for the Medicaid program, even though the SCHIP programs are far smaller. They stated that imposing such large burdens on SCHIP programs, which have fewer administrative funds, would necessitate diversion of resources away from areas like outreach and enrollment processing. These commenters suggested relaxing sampling and precision estimates for smaller States or programs.

Response: We cannot adopt this recommendation. As noted above, reducing the State sample sizes to achieve less than 3 percent precision with a 95 percent confidence level would (1) not provide the State with sufficient information to determine vulnerabilities and to initiate corrective action; and (2) not achieve a national error rate that meets the OMB confidence and precision requirements when rolling up the State error rates.

Comment: Some commenters stated the stratified sample is a complicated feature and expressed concern with the cost and resource burden to pull a large sample for review, particularly for the SCHIP program, which has limited administrative funding, or for States with smaller populations.

Response: Stratification of the claims is necessary to improve precision, reduce sample size, and identify the areas of greatest vulnerability. We believe it is necessary for each selected State to submit stratified claims data because the contractor otherwise would not be able to complete the statistical aspect of the measurement process in a timely manner. We have reevaluated the burden associated with States submitting adjudicated and stratified claims data for each current quarter and estimated the burden to be up to 200 FTE hours per quarter. Details regarding States' role in eligibility testing will be described in a subsequent issuance.

Comment: A few commenters suggested reducing the sample size to minimize the burden on providers.

Response: The sample size is determined by the number of claims that need to be reviewed to meet our State-specific confidence and precision levels and cannot be reduced to minimize the burden on providers. We analyzed the impact on providers as part of the proposed rule and determined it was not significant. It should be noted that only providers whose FFS claims were selected would submit medical records, as managed care claims are not subject to medical review.

Comment: A few commenters stated that it was not clear if the sample size considers cases where eligibility cannot be verified due to death or non-cooperation of the client.

Response: The sample sizes in the proposed rule would not have excluded these cases. Under the pilot projects, we allowed States to oversample to account for these cases that are dropped from the

eligibility review if the State could not verify eligibility due to these reasons. We will ask the eligibility workgroup to consider this issue for measuring eligibility error rates and will clarify how these cases will be treated in a subsequent issuance.

Comment: A few commenters believe that monthly samples would be complicated and were not pulled under the PAM pilots.

Response: Since States will not need to pull monthly samples for the data processing and medical reviews under the national contractor approach, we believe this issue is no longer applicable for these reviews. To the extent that the final eligibility testing methodology involves State sampling, as stated above, we will address this issue in a subsequent issuance.

Comment: A few commenters pointed out that the proposed rule did not mention whether Medicaid FFS claims would be stratified into seven strata by service, as was done in the PAM pilots.

Response: Under the proposed rule, the intent was to stratify the Medicaid FFS claims. We are considering the following strata: (1) Inpatient hospital, (2) long term care, (3) practitioners and clinics, (4) pharmacy, (5) home and community-based services, (6) other services and supplies, and (7) fixed payments such as Medicare Parts A and B premiums, and an eighth stratum for denied claims. This is the stratification model that is being used for the current PERM pilot. The methodology under the national contracting strategy described in this interim final rule would stratify the FFS claims in a similar manner with variations for SCHIP, as appropriate. However, CMS will direct the national contractor on all implementation issues.

Comment: A few commenters stated that a dollar weighted sample would cause an over sampling of high-cost, low-error services like nursing home and hospital care, rather than lower-cost services that have historically higher error incidence.

Response: This method improves the precision of the estimate if the variance of the accuracy rate across strata is proportional to the Medicaid payment share represented by the stratum. When calculating the final payment error rate, this oversampling and undersampling by stratum is taken into account and the sample is reweighted to calculate an unbiased estimate of the overall payment error rate.

Comment: Many commenters recommended that the reviews have a more balanced approach between FFS and capitated payments. The concern is that FFS claims will have a higher level of scrutiny than managed care claims, which unfairly characterizes FFS as more prone to fraud and error. They expressed concern that higher error rates would inevitably be detected for fee-for-service claims than for managed care payments, even though undetected Medicaid payment errors may also occur under capitated managed care.

Response: Under the proposed rule, the sample is drawn proportional to the State's spending. For example, if two-thirds of the State's funds are spent in FFS, then two-thirds of the dollar share of the Medicaid sample in the State would be FFS claims. In this manner, the measurement would be more representative of total Medicaid spending and we believed would produce a more accurate error rate. However, in this interim final rule, as previously stated, when we begin measuring both the FFS and managed care components of Medicaid and SCHIP, as we expect to in FY 2007, we will estimate separate error rates for FFS and managed care. We will also produce a combined FFS and managed care error rate for each State for each program in addition to providing a national error rate for each program.

Comment: Some commenters suggested that CMS should require that data presented on error rates explain that the errors computed for FFS claims and capitated payments are not comparable because of measurement differences and that fewer errors are detected for managed care because the review is less intensive.

Response: We agree with this comment. However, since States will not be estimating FFS error rates, the recommendation that we require States to provide an explanation on the measurement differences is no longer relevant.

3. Overpayment and Underpayment Errors

Comment: Many commenters stated that adding overpayments and underpayments together will count unspent dollars as misspent dollars and recommended an error rate for each type of payment.

Response: The IPIA specifically provided that OMB set implementation guidelines for Federal agencies. The OMB guidelines state that the annual estimated amount of erroneous payments is the gross total of both overpayments and underpayments. In order to be in compliance with IPIA, we must follow OMB guidelines regarding total gross overpayments and underpayments to derive error rate estimates. However, we also intend to report separately the amount of overpayment and underpayments.

Comment: Some commenters believe that only overpayments are the appropriate gauge of misspent dollars.

Response: We must estimate improper payments according to the IPIA and OMB guidelines. OMB guidelines require the inclusion of both overpayments and underpayments in the error rate estimate. As such, we must measure and report both overpayments and underpayments.

Comment: A few commenters asked if the sum of both underpaid and overpaid claims exceeds 2.5 percent or more than $10 million, would this be considered ''significant'' or must the error rate meet just one or both of these conditions to be considered ''significant.''

Response: The IPIA states that significant improper payments are payments that exceed $10 million. OMB guidance defines significant erroneous payments as annual erroneous payments exceeding both 2.5 percent of program payments and $10 million. However, these thresholds refer to the national error rate for the program rather than State-specific error rates. Neither the IPIA nor OMB guidelines set target State-specific error rates.

4. Adjustment to Claims

Comment: Some commenters stated that the 60-day timeframe to allow for adjustments to claims is arbitrary and should be extended to 120 calendar days to give providers and the States' payment systems more time to identify and correct adjudicated claims issues.

Response: The 60-day timeframe was agreed upon by States and CMS during the development of the review methodology under the PAM pilot projects as a reasonable timeframe that allows for adjustments while maintaining a timeline that also allows for completion of the reviews and to compute and report the error rates in time for inclusion in the next PAR. If we extend the timeframe to a point beyond 60 days, we could not be assured that the error rate measurement process would be completed in time to report the error rate. Therefore, we are not adopting this recommendation.

Comment: Other commenters stated that identification and review of adjustments are complicated and increase the complexity of the error rate measurement process.

Response: Reviewing adjustments to claims provides a more accurate error rate because adjustments reflect a more accurate final amount paid.

Comment: A few commenters stated that, in the current Health Information Portability and Accountability Act (HIPAA) claim format, information on the allocation of third party liability

(TPL) amounts is not required at the line level. There is no way to know if TPL calculations are correct for a specific line if the provider reported the information in the aggregate and asked whether this is what is meant by ''line items that are not individually priced.''

Response: Line items that are not individually priced are generally bundled into a service. Under the proposed rule, the service is the sampling unit. States were not required to sample at the line item. This concept would remain the same under the national contracting strategy as described in this interim final rule.

5. Other Comments

Comment: A few commenters stated that CMS should ensure that all payment information from CMS that States depend on to pay providers is given to States at least 60 days before the expected implementation date.

Response: We strive to work with States on a myriad of complicated financial issues and respond to issues in a timely manner. To that extent, we also make every effort to provide policy guidance to States in a timely manner but, due to the complexity of issues, we would not commit the agency to a 60-day timeframe for providing all payment information.

D. Review Procedures

1. Medical Reviews

Comment: Some commenters stated that requiring a medical review increases the cost and logistical complexity of the review effort due to the review time and follow-up necessary to obtain provider records.

Response: Since States are no longer performing the medical reviews and will not incur the cost of the reviews, we believe this concern has been addressed.

Comment: A few commenters stated that obtaining records for denied claims may prove more problematic than for paid claims.

Response: As stated above, since States are not performing the medical reviews and will not need to obtain records for the reviews, we believe this concern has been addressed.

Comment: A few commenters stated that providers should not have to submit records for denied claims since there is no incentive for them to copy records for services that Medicaid did not reimburse.

Response: If providers chose not to submit medical records for denied claims, we would consider the State to have properly denied the claim.

Comment: Some commenters recommended that States be allowed to contract with external quality review organizations to do the reviews.

Response: Since States will not be conducting the medical and data processing reviews, they will not need to contract with external organizations.

Comment: Some commenters stated that projected costs to conduct the reviews will exceed the $300 per review due to the type and number of FFS claims to be sampled.

Response: We estimated the costs of review based on information given by States participating in the PAM pilot projects. However, since we will engage a contractor to perform the medical and data processing reviews and States will not incur these costs, this comment is no longer relevant. Once the details of eligibility testing are finalized, we will address cost estimates in a subsequent guidance.

Comment: A few commenters stated that requesting, receiving and performing medical reviews is a time-consuming process. There is not enough time allocated to completing the review process prior to having to return the Federal share for overpayments identified within 60 days.

Response: States are no longer being asked to conduct the medical reviews for purposes of this interim final rule. Therefore, we believe the concern with concluding the medical reviews timely in relation to returning recoveries is no longer relevant.

Comment: Some commenters made recommendations that only medically unnecessary services and services not covered or delivered, as well as over and underpayments due to improper coding, should be counted as errors and other error types such as technical errors, such as minor coding and clerical errors, should be excluded.

Response: It is not clear what the commenters believe to be a minor coding or clerical error. We believe that if the error has any effect on the payment, then it must be included in the error rate calculation.

Comment: A few commenters acknowledged that inadequate documentation is a problem and agreed it should be measured but recommended that it be measured separately from clearly improper payments.

Response: We disagree with this comment. If documentation is inadequate to support the correctness of the claim, we believe it would be unreasonable to consider these claims as correct. Otherwise, any claim with inadequate documentation could be deemed correct which would undermine the purpose and reliability of the improper payment measurement.

Comment: A few commenters suggested that the method for determining medical necessity should be clearly stated in regulation, and recommended using the InterQual level of care criteria or similar product to reduce error rates and improve relationships with providers.

Response: As stated above, since the States are not performing the medical reviews, it is no longer necessary to define or clarify review procedures.

Comment: A few commenters noted that hospitals can be large organizations where mail with no addressee could take weeks to get to the appropriate person or could get lost and suggested that there should be a phone and e-mail address on the notification where receipt of the request can be confirmed. They also recommended follow-up to no responses from providers.

Response: We appreciate this suggestion but believe it is no longer relevant since States will not be conducting the medical reviews.

Comment: Some commenters wanted to know whether the claims for which providers did not respond should be discarded from the sample and how they should proceed with providers who are no longer in the program and refuse to provide medical records.

Response: As stated above, clarification of the review procedures is not necessary since States are not conducting the medical reviews.

Comment: A few commenters stated that it may be difficult to obtain records on Medicare cross-over claims and SCHIP claims when Medicaid has no agreement with the provider.

Response: We agree with the commenter and Medicare crossover claims will not be subject to medical review. The Medicare crossover claims will be subject to the data processing review.

Comment: Some commenters suggested that medical records should be requested only as a last resort since it is labor intensive for providers. Instead, commenters suggested that information be gleaned from claims.

Response: We are unclear as to how one would perform a comprehensive medical review based on the information provided on the face of the claim. In addition, we analyzed the burden on providers as part of the proposed rule and determined that there is no major impact on them to provide medical records.

Comment: A few commenters stated that the current medical review process accomplished under the Surveillance and Utilization Review Subsystem (SURS) program is more than adequate.

Response: We believe this point is not applicable since States will not be conducting the medical reviews. However, we encourage States to continue with reviews that uncover payment errors and other program weaknesses.

2. Data Processing Reviews

Comment: A few commenters stated that most claims are submitted by electronic media and asked whether the review can be accomplished through software that duplicates MMIS processing.

Response: Since States will not be conducting the data processing reviews, we believe this question is no longer relevant.

Comment: A few commenters asked whether the State should review the capitation fee or the actual claims for SCHIP when it is administered by a capitated per member per month fee.

Response: Since States will not be conducting the data processing reviews, we believe this question also is no longer relevant.

Comment: A few commenters commented that the specific review items for managed care claims, for example, non-covered services, third party liability, invalid pricing seemed to be inappropriate since the States would not be reviewing managed care encounters.

Response: Since States will not be conducting the data processing reviews, we believe this comment is no longer relevant.

3. Eligibility

Comment: Many commenters stated that the eligibility reviews in the proposed rule are expensive in both funds and staffing needs and duplicate current efforts under the MEQC program and SCHIP eligibility audit processes. They recommended that the eligibility reviews be eliminated or merged with MEQC.

Response: As previously stated, we cannot eliminate the eligibility reviews because the IPIA includes payments to ineligibles in defining improper payments. We have previously addressed the reasons why we chose not to merge the reviews with MEQC. When we convene the eligibility workgroup, we will ask for recommendations about how to estimate eligibility errors while minimizing burden, cost, and duplication with MEQC.

Comment: Many commenters had suggestions and recommendations on the eligibility review process and procedures, such as retaining the administrative period, allowing for technical errors, using the same rules as the application process, such as self-declaration, and excluding Supplemental Security Income (SSI) cases.

Response: We are not adopting these suggestions in this interim final rule since we have not yet finalized a method for eligibility reviews and plan not to conduct eligibility reviews in Medicaid and SCHIP in FY 2006. We will consider these recommendations as CMS and the workgroup determine the best method to measure eligibility errors and will address these suggestions and the requirements for eligibility reviews in a later issuance.

Comment: Most commenters stated that the proposed eligibility reviews have flaws that would produce overestimates of Medicaid eligibility errors. The eligibility review should be further clarified.

Response: As stated above, we are not adopting these suggestions in this interim final rule time since we have not yet finalized a method for eligibility reviews and will not conduct eligibility reviews in FY 2006. We will convene a workgroup to consider the best approach to eligibility reviews under the IPIA. We invite public comments on this issue.

Comment: Most commenters stated that payment errors should not be determined for a beneficiary who is certified on the basis of presumptive eligibility for Medicaid or SCHIP during the period of presumptive eligibility, so long as the presumptive eligibility determination has been conducted properly.

Response: Under the proposed rule, cases of presumptive eligibility under Federal law would have been excluded from review. We believe that the intent of the Congress is to hold States harmless for the limited time that presumptive eligibility is in effect for pregnant women and children under sections 1920, 1920A and 1920B of the Act. Since we have not determined how best to conduct the eligibility reviews at this time, we cannot state for certain that these cases will be excluded when we implement the reviews but we will raise this concern to the eligibility workgroup for their consideration and will address this issue in a subsequent issuance.

Comment: Many commenters suggested that if the review found a person to be ineligible under the Medicaid or SCHIP eligibility category in which they were enrolled, the review should have assessed whether the person was eligible under another Medicaid or SCHIP eligibility category. If a person was eligible under another category, then no overpayment would have occurred.

Response: The eligibility reviews in the proposed rule were intended to look at eligibility under the Medicaid program, not just the category of coverage within the Medicaid program. The same concept holds true for SCHIP. As such, no overpayment would have occurred if the review determined that the person was eligible for the program and that the beneficiary was eligible to receive the service under that program. We will apply this same concept when we implement eligibility reviews. However, since we have been and will continue to be estimating error rates for Medicaid and SCHIP separately, if a person was ineligible for one program or ineligible for a service under the program, the claim would have been in error regardless of whether the person was eligible for the other program or that the service was covered under the other program. In other words, if a person is determined ineligible for Medicaid or for a Medicaid service, eligibility for SCHIP is not relevant to whether or not an improper payment for Medicaid was made for the person.

Comment: Some commenters stated that beneficiaries, whose eligibility is based on information provided by another program, including Food Stamps, Temporary Assistance for Needy Families, or Medicare low-income drug benefit, should be exempt similar to the proposed rule's exemption of SSI beneficiaries.

Response: We do not agree with this comment. We believe that, in measuring improper payments, the State should be accountable for all Medicaid eligibility determinations regardless of which State agency is making the determination or regardless of which State agency provides the information. While the eligibility reviews would not have required the State to verify, for example, TANF eligibility, the information obtained by the TANF agency on which a Medicaid eligibility determination was made should be verified if there is no evidence that the TANF agency verified the information as part of its eligibility determination. The proposed rule did not exempt SSI cases from the eligibility reviews (see proposed § 431.982(a)(2)(iv), 69 FR 52631).

Comment: A few commenters asked how the eligibility reviews would coordinate with the medical and data processing reviews.

Response: Under the proposed rule, all three reviews would have been conducted on each FFS claim (there would not have been a medical review on managed care claims). We expect the

eligibility reviews will be coordinated with the medical and data processing reviews being done in those States selected for review so that an error rate for Medicaid and SCHIP FFS, managed care and eligibility can be concurrently calculated for each State under review. We will address this issue in a later issuance.

Comment: Many commenters stated that determining eligibility at the time of service is stringent and raises difficulties and significant barriers for States in verifying eligibility for a time so far in the past and pointed out that corrective actions would be meaningless.

Response: We agree with this comment. We have not determined at this time how eligibility reviews will be conducted under IPIA. We invite public comment on this issue and will respond in a subsequent issuance.

Comment: Some commenters stated that State remedies to improve error rates, such as more frequent redeterminations, will exacerbate involuntary disenrollment and churning without providing any meaningful fiscal impact.

Response: We do not agree with this comment. States should strive to improve the accuracy of their eligibility determinations as part of their prudent fiscal management responsibilities regardless of whether or not we are specifically measuring eligibility errors. As such, States can improve their eligibility processes in many ways beyond more frequent eligibility determinations without necessarily creating an adverse effect on program enrollment.

Comment: A few commenters argued that error rates would be skewed upward by children who are ineligible at a particular point in time but who are eligible over the course of a year.

Response: We believe this comment means to be asking about the issue of continuous eligibility and its impact on improper payment measurement. The eligibility workgroup will be addressing the issues of defining the universe, sampling techniques and other review variables regarding an eligibility error rate.

Comment: A few commenters argued that SCHIP participants who are eligible for Medicaid and vice versa should not be cited as totally ineligible and only the difference in the error amount between the two programs should be cited as an error for a service obtainable through both programs.

Response: We disagree with this comment because the IPIA requires estimates of improper payments for each program. As such, the rule provides for separate measurements of improper payments in Medicaid and SCHIP and would have cited the improper payment amount for the claim being reviewed.

Comment: A few commenters stated that some States will face difficulties with respect to coordination among agencies, record retention, and storage.

Response: We agree that the proposed rule presented States with many challenges for measuring improper payments in their programs. We believe adopting the recommendation to engage a Federal contractor to conduct medical reviews addresses many of the commenters' concerns and alleviates, to the extent reasonably possible, challenges that States would have faced.

Comment: A few commenters wanted to know how the MEQC findings would coordinate with the deadlines for reports to OMB for the following year, and any possible corrective action plans between agencies.

Response: The provisions of MEQC were not coordinated with or affected by the proposed rule. Based on the recommendations of the eligibility workgroup, we will address any coordination between MEQC and the eligibility reviews under IPIA in a subsequent issuance. Finally, we believe that States should have the flexibility to coordinate corrective action plans among their agencies as appropriate.

Comment: Most of the commenters expressed concern that if the proposed rule were implemented, the regulations could harm the coverage and well-being of low-income children, families, seniors, and people with disabilities in Medicaid and SCHIP by encouraging restrictive policies that could have made it harder for low-income beneficiaries to enroll and stay enrolled in Medicaid and SCHIP.

Response: Neither the proposed nor this interim final rule requires States to reduce or terminate a beneficiary's program benefits in any way or require States to impose more restrictive requirements that would create barriers to the programs. The eligibility workgroup will take into consideration the possible impact that any proposed recommendations for eligibility error rate measurement may have on beneficiaries, including this concern.

Comment: Many commenters were concerned that the restrictive policies that would require more participation by the recipients to prove eligibility, for example, providing documentation or attending interviews, would threaten enrollment simplification and access for beneficiaries and individuals who might have been eligible for Medicaid or SCHIP and could also increase the ''churning'' of recipients in and out of Medicaid or SCHIP coverage in cases where beneficiaries failed to complete the redetermination process, which would disrupt the patient-provider relationship, leading to higher health care costs and increasing the potential for quality concerns.

Response: The eligibility workgroup will take into consideration the possible impact that any proposed recommendations for eligibility error rate measurement may have on beneficiaries, including this concern.

Comment: Many commenters stated that the eligibility review, which would have required the beneficiary to be eligible on the date of service and provided no administrative period to allow for report of changes in beneficiary status, would have created a significant burden for beneficiaries of these programs and would likely have resulted in disenrollment of many eligible individuals and families.

Response: We disagree with this comment. The eligibility review is to verify eligibility at the time of service to determine whether the claim was correctly paid. The review would ask for the recipient's cooperation only if eligibility could not be verified through the case record review or through other sources. Recipients have a responsibility to cooperate in the eligibility determination process, whether at application, during redetermination or through a quality control review. Recipient cooperation during a MEQC review is longstanding. Also, the proposed rule would not have required States to terminate program eligibility as a result of the reviews. As such, we do not agree that the review would have created a significant burden for beneficiaries or resulted in disenrollment. When we determine the type of eligibility reviews for Medicaid and SCHIP to be implemented under IPIA, we will address this issue.

Comment: Many commenters expressed concern that the regulation would have barred reviewers from counting the ''administrative period'' which is currently used in MEQC to account for the time permitted for a person to submit changes in eligibility information and for the time for the State to process these data.

Response: We will consider this comment in the context of the workgroup in determining the best approach to eligibility reviews under the IPIA and we will address it in a subsequent document.

Comment: Many commenters noted that if eligibility reviews remained in PERM, CMS and the States would need to develop a system to review for errors in denials of eligibility or recertification,

in order to comply with the IPIA. They argued that the OMB guidance for IPIA stated that payment error estimates should include estimates of inappropriate denials of services; PERM included no efforts to measure erroneous denials of eligibility or to measure progress in serving eligible people.

Response: Current Federal regulations require States to review a sample of Medicaid denials and terminations under MEQC which helps protect beneficiaries against erroneous denials and terminations of Medicaid. SCHIP agencies can institute a similar review. OMB guidance did not include erroneous denials of eligibility as eligibility decisions do not always drive Medicaid or SCHIP payment. However, we will revisit this concern with the eligibility workgroup and will address it in a subsequent issuance.

E. Reporting and Recordkeeping

Comment: A few commenters stated that medical records do not lend themselves to replication for record retention, for example, x-rays, and asked if scanning is allowed for any and all records.

Response: Those States selected for reviews will submit information that the contractor will scan and retain. Therefore, States will not be required to retain this information for purposes of error rate measurements under the OMB guidance. The collection of this information is permitted (subject to privacy restrictions) under the HIPAA provisions and our regulations at 45 CFR Part 164.

Comment: In commenting on retaining records for Federal re-review or audits, a few commenters asked whether there will be some level of tolerance that will keep Federal re-reviews and audits from occurring. The commenters stated that it is becoming difficult to accommodate the various audits from internal and external sources.

Response: The proposed rule would have required States to retain records for Federal re-review and future audits on the basis that the States were conducting the reviews and calculating the State-specific error rates. However, since the records to support the medical determinations and the calculation of the State-specific error rates and the national error rate will be retained by the national contractor, the Federal re-reviews (for example, OIG review) will be conducted at the national contractor location(s).

Comment: A few commenters asked that the final rule verify the assumption that the States' electronic files and records meet the requirements of the rule regarding supporting the testing and statistical calculation of the Medicaid and SCHIP error rates.

Response: We would be unable to verify any assumption that States' documentation retained for purposes of supporting the error rate is adequate since we would have no control over what documentation the States retained and if States retained all documentation in good and full form for the required period of time. We are proposing that under our Federal contractor's methodology insufficient documentation to support a determination that the claim was correctly paid would be considered an error for the purposes of the IPIA.

F. Recoveries

Comment: A few commenters stated that the Federal share of any overpayment be returned within 60 days of the actual recovery of the payment, rather than identification of the payment, and that the States should decide whether pursuing recovery is cost effective since pursuing recoveries against providers on a claim-by-claim basis is administratively burdensome.

Response: As stated earlier, the requirement to return the Federal share of erroneous payments within 60 days of identification is longstanding in statute and regulation and does not allow for only cost-effective recoveries. The provisions of the recovery regulation were open to public comment at the time of its publication. It is outside the scope and intent of this regulation to amend provisions of separate, existing regulations.

Comment: A few commenters asked how the recovery is affected by the MEQC statute under which improper payments based on eligibility errors are recouped, particularly if a State is conducting MEQC pilots or has its MEQC program attached to its research and demonstration waiver under section 1115 of the Act.

Response: Improper payments based on eligibility determinations are subject to recovery under section 1903(u) of the Act which governs the MEQC program. Thus, these payments are not subject to recovery under section 1903(d)(2) of the Act.

Comment: A few commenters asked how erroneous eligibility determinations, though exempt from Medicaid overpayments, will be reported.

Response: The proposed rule did not exempt the reporting of erroneous eligibility determinations or overpayments on this basis. The proposed rule merely stated that section 1903(u) of the Act governs the recovery of overpayments based on eligibility errors. As stated in this interim final rule, we will determine the eligibility review process with the assistance of the workgroup and will respond to the reporting of improper eligibility determinations under the IPIA in a later document.

Comment: A few commenters recommended that CMS consider that overpayments may be part of fraud investigations and the Medicaid Fraud and Control Unit (MFCU) may not want State intervention in an active investigation.

Response: Because the proposed rule has been substantially altered through the use of a Federal contractor, State intervention in an active CMS fraud investigation is no longer a relevant issue. Conversely, the Federal contractor will not know which claims in the sample are under State fraud investigation nor would the contractor be working directly with the MFCUs during the course of the medical and data processing reviews.

Comment: A few commenters stated that, since States return the Federal share of overpayments, States should receive additional funds for underpayments.

Response: We agree with the commenters. States that make adjustments for underpayments would draw down the appropriate Federal matching funds.

Comment: A few commenters suggested that measuring improper payments in Medicaid and SCHIP should include adequate safeguards to prevent against repayments of Federal funds when genuine errors do not exist, for example, an incorrect date of service that, if corrected, would not affect the amount of payment.

Response: The recoveries provision in the proposed rule was a cross-reference to existing State requirements to refund the Federal share of payments when an overpayment occurred. It is outside the scope of this rule to make exceptions or changes to another regulation. Therefore, we are not adopting this recommendation in the interim final rule.

Comment: A few commenters recommended that States be required only to return the Federal share of any payments after all the overpayments and underpayments are taken into consideration.

Response: The proposed rule was not intended to make exceptions or changes to another regulation. Therefore, we are not adopting this recommendation.

Comment: A few commenters recommended that small overpayments

that resulted in an expanded investigation would reap more Federal share of funds returned. Therefore, the commenters recommend that overpayments should be returned as one large payment rather than two separate payments.

Response: We are unable to adopt this recommendation because it would violate the current requirement that States return the Federal share within 60 days of identification of an overpayment.

G. Appeals

Comment: A few commenters stated that the proposed rule is devoid of any discussion of provider notification and appeal rights when an error has been determined, nor does it provide an opportunity to appeal or indicate how the process would use the existing notification and appeals process for both beneficiaries and providers.

Response: Appeals procedures are not modified by this rule and therefore have not been addressed. To summarize, if the State retrospectively denied the claim, the provider could appeal the denial under the existing State appeal process. If the provider won the appeal, we would back the error out of the error rate calculation, either at the time of the error rate calculation or, for claims reviewed towards the end of the year, subsequent to the error rate calculation.

Regarding beneficiaries, we do not make payments to beneficiaries except in limited circumstances permitted by CMS regulation or policy, so we do not anticipate that they will be impacted by this rule. Also, States must, under current regulations at § 435.916, redetermine Medicaid eligibility prior to terminating program benefits. Therefore, the State cannot terminate program benefits based on any eligibility errors found through these reviews without first doing a redetermination. If the redetermination concludes the person is no longer eligible, the normal beneficiary appeals process would occur at that time. Similarly, the SCHIP program provides for beneficiaries to appeal any proposed termination action.

IV. Provisions of the Interim Final Rule

[If you choose to comment on issues in this section, please include the caption ''PROVISIONS of the INTERIM FINAL RULE'' at the beginning of your comments.]

The IPIA requires the Secretary to annually review all programs and activities that are susceptible to significant improper payments, estimate the amount of improper payments, and report those estimates to the Congress. OMB has identified Medicaid and SCHIP as programs at risk for significant improper payments. Because of the wide variation in States' Medicaid and SCHIP programs due to the flexibility States have in developing coverage, eligibility determination policies, benefit, and reimbursement aspects of the programs, we rely on State-specific information to develop State-level estimates.

Based on comments and recommendations received on the August 27, 2004 proposed rule, we will adopt the recommendation to use a Federal contractor to estimate medical and data processing error rates for Medicaid and SCHIP based on reviews of adjudicated claims. By FY 2008, we expect to be compliant with the IPIA requirements. In FY 2006, we will use a Federal contractor to estimate improper payments from medical and data processing reviews in the fee-for-service component of Medicaid and establish a workgroup to make recommendations on the best approach for reviewing Medicaid and SCHIP eligibility within the confines of current statute and with minimal budgetary impact for purposes of meeting IPIA requirements to measure improper payments based on payments to ineligibles.

Under the national contracting strategy, a number of States will be selected for review. Our sampling methodology will ensure that each State will be selected once, and only once, every 3 years for each program. The error rates produced by this selection methodology will provide the State with a State-specific error rate estimated to be within 3 percent precision at the 95 percent confidence level.

The contractor will select a number of States to be reviewed. States selected for review will submit the previous year's claims data and expenditures, not already otherwise provided by CMS, after which the contractor will determine each State's sample size and the sample size for each stratum. These States also will submit quarterly adjudicated and stratified claims data to the contractors who will pull a statistically valid random sample, each quarter, by stratum. Based on previous estimates, the average sample size per State is expected to be 1,000 claims (based on a previous estimate of range of 800 to 1,200 claims per State).

The contractor will conduct medical and data processing reviews. Initially, the eligibility reviews will not be conducted. We will convene a workgroup that will consider the best approach to measure improper payments based on eligibility errors within the confines of current law and with minimal budgetary impact. It is possible that States will be required to conduct at least part of the eligibility tests, should the workgroup recommend it. Any additional requirements placed on States will be detailed in a subsequent issuance.

This interim final rule sets forth the State requirements to provide information to us for purposes of estimating medical and data processing improper payments in Medicaid and SCHIP. Section 1102 of the Act authorizes the Secretary to establish regulations as may be necessary for the efficient administration of the Medicaid and SCHIP programs. Medicaid law at section 1902(a)(6) of the Act and SCHIP law at section 2107(b)(1) of the Act require States to provide information necessary for the Secretary to monitor program performance. Through these statutory provisions, this interim final rule with comment period requires only those States selected for review to provide the contractor with the following information needed to monitor program performance by submitting, at a minimum, the following information:

- The previous year's claim data and expenditures, not already otherwise provided by CMS from which the contractor will stratify claims and determine sample sizes.
- Quarterly adjudicated and stratified claims data from the review year that are needed to select a random sample of claims for review in each State.
- All medical policies in effect and quarterly medical policy revisions needed to review claims.
- Systems manuals needed for data processing reviews.
- Current provider contact information; verified and/or updated as necessary to have providers submit medical records needed for medical reviews.
- Repricing of claims the contractor determines to be in error.
- Claims that were included in the sample, but the adjudication decision changed due to the provider appealing the determination and the State overturning the original decision.
- An annual report on corrective actions to reduce the error rate.
- Other information that the Secretary determines is necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP.

States selected for review also will provide technical assistance as needed to allow the contractor to fully and effectively perform all functions necessary to produce the program error rates.

In addition, regulations at § 430.35 and § 457.204 govern State compliance with Federal requirements in Medicaid and SCHIP, either because the State plan does not comply with Federal requirements or because the State is not complying in practice. Under these regulations, the Administrator notifies a State that it is in noncompliance with a particular regulation and that no further payments will be made to the State or that only partial payments will be made, that is, in areas not affected by the noncompliance, until the Administrator is satisfied that the State has come into compliance. The Administrator has the discretion to enforce these regulations in instances when States do not cooperate in a timely and efficient manner with us in producing Medicaid and SCHIP program error rates for IPIA purposes. Finally, section 1902(a)(27) of the Act requires providers to retain records necessary to disclose the extent of services provided to individuals receiving assistance and furnish the Secretary with information regarding any payments claimed by the provider for furnishing the services as the Secretary may request.

This interim final rule with comment period does not require States to estimate the annual total improper medical and data processing payments and produce payment error rates in Medicaid and SCHIP using the methodology described in the proposed rule. The provisions of this interim final rule with comment period will be set forth in 42 CFR part 431, subpart Q and in part 457, subpart G, as in the proposed rule, with the following changes:

Section 431.950 in the proposed rule would have required States to estimate improper payments and produce payment error rates in Medicaid and SCHIP. This section will be revised by the interim final rule with comment period to state that the purpose of the rule is to require States to submit information necessary to enable the Secretary to produce a national improper payment error rate for the Medicaid and SCHIP programs. This interim final rule includes the types of information that States would need to submit in order for CMS to estimate improper payments in Medicaid fee-for-service (FFS) beginning in FY 2006 by conducting medical and data processing reviews on claims made in the FFS setting. CMS will address estimating improper payments for Medicaid managed care and eligibility and SCHIP FFS, managed care and eligibility at a later time.

Section 431.954(a) in the proposed rule set forth the statutory basis for the Secretary's general rulemaking authority and the States' obligation to provide information for monitoring program performance. This section will be revised to add the statutory reference of section 1902(a)(27) of the Act, which requires providers to retain and provide medical records necessary to disclose the extent of services provided to individuals receiving assistance and any payments claimed by the provider for furnishing the services as the Secretary may request.

Section 431.954(b) in the proposed rule would have set forth the scope of the statutory provisions as requiring States to annually estimate total Medicaid and SCHIP improper payments in their States and submit to the Secretary the payment error rates. This section will be revised by the interim final rule with comment period to set forth the types of information that the States and providers are required to submit to the Secretary for the purposes of estimating improper payments in Medicaid and SCHIP.

Section 431.958 which, in the proposed rule, would have set forth the definitions and use of terms, will be revised by the interim final rule to strike all definitions except the following definitions: improper payment; payment; and payment error rate.

Section 431.962 in the proposed rule would have set forth the State plan requirements for providing and submitting to the Secretary estimates of the payment error rates for Medicaid and SCHIP. This section is removed in the interim final rule because States are no longer required to submit estimates of the payment error rates for Medicaid and SCHIP. However, existing Medicaid and SCHIP regulations require: (1) State plans to include assurance that the State collects data, maintains records and furnishes reports to the Secretary (see § 457.720 for SCHIP and § 431.16 and § 431.17 for Medicaid; and, (2) that the SCHIP and Medicaid programs must include methods of administration that the Secretary finds necessary for the proper and efficient operation of the program (see § 457.910 for SCHIP and § 431.15 and § 435.903 for Medicaid). Therefore, to avoid States incurring additional cost and burden, we believe it is not necessary to require States to submit new State plan material requiring submission of information to the Secretary since we believe these requirements are covered under these current regulations and are included in this interim final rule.

Section 431.970 in the proposed rule would have set forth the requirement that States provide annually to the Secretary payment error rates for both Medicaid and SCHIP. That section is replaced by a new § 431.970 in this interim final rule with comment period to specify the information that States would be required to provide to the Secretary that is necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP and for submitting a corrective action report for purposes of reducing the error rate.

Sections 431.974, 437.978, 437.982, 431.986, and 431.990, which prescribe the basic elements of PERM and set forth the methodology by which States would sample and review claims, report the error rates, and retain records are removed.

Section 431.1002 in the proposed rule reiterates for the reader's convenience current regulations at § 433.312 that requires States to return the Federal share of overpayments identified through the State reviews. This section is revised in the interim final rule with comment period to remove the phrase ''in the sampled claims reviewed for data processing and medical necessity'' and to cross-reference the existing regulatory requirement for States to return the Federal share of overpayments within 60 days of identification. This section is for the reader's convenience only and is not intended to revise the existing regulatory requirement at § 433.312.

Section 457.720 is revised to include the same requirements in this section that are included in § 431.970.

V. Collection of Information Requirements

Under the Paperwork Reduction Act 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 Paperwork Reduction Act 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 comment on each of these issues for the following sections of this document that

contain information collection requirements:

Section 431.970 of this document contains information collection requirements. This section sets forth requirements for States to provide information to us for purposes of estimating medical and data processing improper payments in Medicaid and SCHIP. Only those States selected for review will be required to provide the contractor, at a minimum, with the following information needed to monitor program performance:

- The previous year's claim data and annual expenditures, not already otherwise provided by CMS, from which the contractor will stratify claims and determine sample sizes.
- Quarterly adjudicated and stratified claims data from the review year that are needed to select a random sample of claims for review in each State.
- All medical policies in effect and quarterly medical policy revisions needed to review claims.
- Systems manuals needed for data processing reviews.
- Current provider contact information; verified and/or updated as necessary to have providers submit medical records needed for medical reviews.
- Repricing of claims the contractor determines to be in error.
- Claims that were included in the sample, but the adjudication decision changed due to the provider appealing the determination and the State overturning the original decision.
- An annual report on corrective actions to reduce the error rate.
- Other information that the Secretary determines is necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP.

The burden associated with this requirement is the time and effort necessary for States to collect this information and provide it to the Federal contractor. The number of respondents is estimated to be up to 36 States (up to 18 Medicaid and up to 18 SCHIP States). The annualized number of hours that may be required to respond to the requests for information equals 58,680 hours (1630 hours per State per program).

As required by section 3504(h) of the Paperwork Reduction Act of 1995, we have submitted a copy of this document to the Office of Management and Budget (OMB) for its review of these information collection requirements.

A notice of this proposed collection was previously published in the **Federal Register** for public comment on July 22, 2005 (70 FR 42324). That document was available for public inspection at the Office of the Federal Register beginning on July 15, 2005 and comments were requested by August 15, 2005 (30 days from date of public display). The shortened timeframe for public comment is essential so that CMS can proceed with data collection from States and providers by October 2005 to meet the deadlines for reporting national Medicaid error rate to Congress.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: William Parham Room C4–26–05, 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: Katherine Astrich, CMS Desk Officer, CMS–6026–IFC, *KAstrich@omb.eop.gov*. Fax (202) 395–6974.

VI. 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 comments in the preamble to that document.

VII. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption ''REGULATORY IMPACT STATEMENT'' at the beginning of your comments.]

A. Overall Impact

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 19, 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 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) 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). We estimate that it will cost up to $11.16 million in Federal funds for a Federal contractor to estimate Medicaid FFS error rates in up to 18 States. Contingent on available funds, we plan to implement reviews to produce a Medicaid FFS error rate to be reported in the FY 2007 PAR.

We estimated it would cost $620,000 per State per program based on a cost of $360 per claim multiplied by an average of 1,000 claims plus $260,000 for travel and other administrative expenses. Based on $620,000 per State to estimate error rates in Medicaid and $620,000 per State to estimate error rates in SCHIP, error rate estimates for up to 18 States would cost a total of up to $22.3 million (up to $11.16 million in each program).

Since we have not determined the type of eligibility review that will be done to gather eligibility error rates under IPIA, we cannot state for certain what State and Federal costs will be added to the approximate $22.3 million Federal amount. We have determined that the interim final rule with comment period will not exceed the annual $100 million threshold impact criterion and an impact analysis is not required under E.O. 12866.

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 small governmental jurisdictions. 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. A request for medical documentation to substantiate a claims payment is not a burden to individual providers nor is the request outside the customary and usual business practice of a Medicaid and/or SCHIP provider. Not all States will be reviewed every year so it is highly unlikely for a provider to be selected more than once, per program per year to provide supporting documentation. In addition, the information should be readily available and the response should take minimal time and cost since the response requires gathering the documents and either copy and mail them, send by facsimile or transmit electronically. Therefore, the request for medical documentation from providers is within the customary and usual

business practice of a provider who accepts payment from an insurance provider whether it is a private organization, Medicare, Medicaid or SCHIP and should not have a significant impact on the provider's operations. Individuals and States are not included in the definition of a small entity. Therefore, an impact analysis is not required under the RFA.

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 604 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 Core-Based Statistical Area and has fewer than 100 beds.

These entities may incur costs due to collecting and submitting medical records to the contractor to support medical reviews but, like any other Medicaid and/or SCHIP provider, we estimate these costs would not be outside the usual and customary business practice nor do we anticipate that a great number, if any, small rural hospitals would be asked for medical records. As stated above, not all States will be reviewed every year so it is highly unlikely for a provider to be selected more than once, per program per year to provide supporting documentation. Therefore, an impact analysis is not required under section 1102(b) of the Social Security Act.

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. In the proposed rule, we estimated that the total computable cost will range from $1 million to $2 million (total computable) for States to measure Medicaid and SCHIP error rates. States commenting on the proposed rule estimated the costs to be higher, and a few States estimated the costs at three times that amount. In this interim final rule with comment period, we are not requiring States to measure the error rates but rather are using a national contractor. This rule is not imposing a cost on States to produce the error rates but rather requires States and providers to submit information already on hand to the contractor so that activities needed to estimate the error rates can be performed. Since the information is on hand and States and providers are not being required to develop new materials, the costs associated with submitting information are for copying and mailing the information although States and providers have the option to send the information electronically. Finally, States will be required to develop, submit and implement corrective action plans designed to reduce the error rates, if necessary.

Under the proposed rule the costs could have been as high as $6 million total computable by States' estimation to conduct reviews and calculate States' error rates. This interim final rule with comment period eliminates all but two of the State requirements contained in the proposed rule. As the interim final rule with comment period drastically reduces the costs and burden to States, we do not anticipate State costs to exceed $110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. The proposed rule, which would have imposed significantly more cost burden on States than this interim final rule with comment period, had an estimated costs of $1 million to $2 million per State. As the remaining costs will be significantly lower than these, we assert this regulation will not have a substantial impact on State or local governments.

The cost and burden associated with submitting this information is the time and cost to copy and mail the information or, at State option, submit the information electronically.

B. Anticipated Effects

The interim final rule with comment period is intended to measure errors in Medicaid and SCHIP. States would implement corrective actions to reduce the error rate, thereby producing savings. However, these savings cannot be estimated until after the corrective actions have been monitored and determined to be effective, which can take several years.

C. Alternatives Considered

We considered the alternatives recommended by the public commenting on the proposed rule and adopted the recommendations for a Federal contractor to review a subset of States. We considered the other alternatives to be not viable or were not the best approach to meet the requirements of the law. If sufficient data are available to estimate these impacts in the final rule, it will be included there. In constructing the methodology to measure Medicaid and SCHIP error rates, we considered other alternatives. We considered different sampling methods in an effort to meet both the requirements in OMB guidance and our goal of being able to compare error rates from year to year while providing States with advance knowledge of when they would be selected for review. We considered random sampling, rotational sampling, sampling on a stratified probability proportional to size and randomly selecting States based on probability proportional to size. We concluded that statistically valid (random) sampling and a stratified or random probability proportional to size basis would meet OMB guidelines but would not provide States with the desired predictability of selection.

In FY 2006, the Federal contractor will group all States into three equal strata of small, medium and large based on States' annual FFS Medicaid expenditures from the previous year, and select a random sample of an estimated 18 States to be reviewed. The error rates produced by this selection methodology will provide the State with a State-specific error rate estimated to be within 3 percent precision at the 95 percent confidence level. For subsequent years, our sampling methodology will ensure that each State will be selected once, and only once, every 3 years for each program.

Regarding the eligibility reviews, because the majority of the cost and burden are attributable to verifying eligibility, we considered limiting the reviews to confirming that persons were actually enrolled in the program at the time of service. We considered augmenting this review with strengthening the current MEQC eligibility oversight activities. However, we determined that an eligibility workgroup should be convened to make recommendations on the best approach to Medicaid and SCHIP eligibility reviews. We plan to have recommendations from the workgroup in FY 2006 so that eligibility reviews can commence in FY 2007 for error rate reporting in the FY 2008 PAR.

D. Conclusion

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINSTRATION

■ 1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Part 431 is amended by adding new subpart Q to read as set forth below:

Subpart Q—Requirements for Estimating Improper Payments in Medicaid and SCHIP

Sec.
431.950 Purpose.
431.954 Basis and scope.
431.958 Definitions and use of terms.
431.970 Information submission requirements.
431.1002 Recoveries.

Subpart Q—Requirements for Estimating Improper Payments in Medicaid and SCHIP

§ 431.950 Purpose.

This subpart requires States to submit information necessary to enable the Secretary to produce a national improper payment estimate for Medicaid and the State Children's Health Insurance Program (SCHIP).

§ 431.954 Basis and scope.

(a) *Basis.* The statutory bases for this subpart are sections 1102, 1902(a)(6), and 2107(b)(1) of the Act, which contain the Secretary's general rulemaking authority and obligate States to provide information, as the Secretary may require, to monitor program performance. In addition, this rule supports the Improper Payments Information Act of 2002, (Pub. L. 107–300) which requires Federal agencies to annually review and identify those programs and activities that may be susceptible to significant erroneous payments, estimate the amount of improper payments, and report those estimates to the Congress and, submit a report on actions the agency is taking to reduce erroneous payments. Section 1902(a)(27) of the Act requires providers to retain records necessary to disclose the extent of services provided to individuals receiving assistance and furnish the Secretary with information regarding any payments claimed by the provider for furnishing services, as the Secretary may request.

(b) *Scope.* This subpart requires States under the statutory provisions in paragraph (a) of this section to submit Medicaid and SCHIP expenditures and claims data, medical policies, data processing manuals and other information as necessary for, among other purposes, estimating improper payments in Medicaid and SCHIP. This subpart also requires States to submit corrective action reports as prescribed by the Secretary for purposes of reducing their payment error rates. This subpart also requires providers to submit medical records and other information necessary to disclose the extent of services provided to individuals receiving assistance and furnish the information regarding any payments claimed by the provider for furnishing the services, to the Secretary as requested.

§ 431.958 Definitions and use of terms.

As used in this subpart, the following definitions apply:

Improper payment means any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and includes any payment to an ineligible recipient, any duplicate payment, any payment for services not received, any payment incorrectly denied and any payment that does not account for credits or applicable discounts.

Payment means any payment to a provider, insurer, or managed care organization for a Medicaid or SCHIP recipient for which there is Medicaid or SCHIP Federal financial participation. It may also mean a direct payment to a Medicaid or SCHIP recipient in limited circumstances permitted by CMS regulation or policy.

Payment error rate means an annual estimate of improper payments made under Medicaid and SCHIP equal to the sum of the overpayments (including payments to ineligible recipients) and underpayments, that is, the absolute value, expressed as a percentage of total payments made over the sampling period.

§ 431.970 Information submission requirements.

States must submit information to the Secretary for, among other purposes, estimating improper payments in Medicaid and SCHIP, that include but are not limited to—

(a) Claims data and annual expenditures from previous year;

(b) Quarterly, stratified adjudicated claims data from the review year;

(c) All medical and other policies in effect and quarterly updates as needed to perform claims reviews;

(d) Data processing systems manuals;

(e) Current provider contact information that is verified and/or updated to contain current provider contact information;

(f) Repricing information for claims that are determined to be improperly paid;

(g) Other information that the Secretary determines is necessary for, among other purposes, estimating improper payments and determining error rates in Medicaid and SCHIP, and

(h) A corrective action report as prescribed by the Secretary for purposes of reducing the payment error rate.

§ 431.1002 Recoveries.

States must return to CMS the Federal share of overpayments identified within 60 days in accordance with section 1903(d)(2) of the Act and related regulations at part 433, subpart F of this chapter. Payments based on erroneous Medicaid eligibility determinations are exempt from this provision because they are addressed under section 1903(u) of the Act and related regulations at part 431, subpart P of this chapter.

SUBCHAPTER D—STATE CHILDREN'S HEALTH INSURANCE PROGRAM

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 3. The authority citation for part 457 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart G—Strategic Planning, Reporting, and Evaluation

■ 4. Section 457.720 is revised to read as follows:

§ 457.720 State plan requirement: State assurance regarding data collection, records, and report.

A State plan must include an assurance that the State collects data, maintains records, and furnishes reports to the Secretary, at the times and in the standardized format the Secretary may require to enable the Secretary to monitor State program administration and compliance and to evaluate and compare the effectiveness of State plans under title XXI. This includes collection of data and reporting as required under § 431.970 of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: August 16, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 22, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–19910 Filed 9–30–05; 11:03 am]

BILLING CODE 4120–01–P

Federal Register

Wednesday,
October 5, 2005

Part III

The President

Proclamation 7936—National Breast Cancer Awareness Month, 2005

Proclamation 7937—National Disability Employment Awareness Month, 2005

Proclamation 7938—National Domestic Violence Awareness Month, 2005

Proclamation 7939—Child Health Day, 2005

Executive Order 13386—Further Amendment to Executive Order 13369, Relating to the President's Advisory Panel on Federal Tax Reform

Federal Register
Vol. 70, No. 192
Wednesday, October 5, 2005

Presidential Documents

Title 3—

The President

Proclamation 7936 of September 30, 2005

National Breast Cancer Awareness Month, 2005

By the President of the United States of America

A Proclamation

Breast cancer is the second most common kind of cancer and the second leading cause of cancer deaths among women in the United States. During National Breast Cancer Awareness Month, we renew our commitment to making progress in the fight to prevent, detect, treat, and cure this deadly disease.

Although we do not yet know the exact causes of breast cancer, researchers have discovered several factors that can increase a person's risk of developing the disease, including age, characteristics of certain genes, and a family history of breast cancer. It is important for individuals to seek medical advice about risk factors and screening methods.

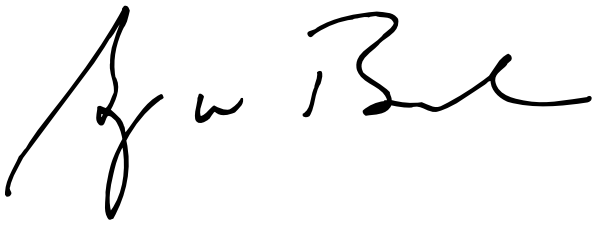
Because treatment is more likely to be successful when breast cancer is detected early, regular screening is vital. The National Cancer Institute (NCI) and the United States Preventive Services Task Force recommend that women age 40 and over have a mammogram every 1 to 2 years. Women with an increased risk of breast cancer should talk to their doctors about getting mammograms even before the age of 40. To increase awareness about the importance of regular screening, the NCI's Cancer Information Service Partnership Program collaborates with nonprofit, private, and government agencies across the country to provide information to people most in need.

America leads the world in medical research, and we are committed to continuing progress in the search for a cure for breast cancer. The National Institute of Environmental Health Sciences and the NCI are conducting research into genetic and environmental factors that may increase breast cancer risk. The NCI is also sponsoring one of the largest studies ever conducted on breast cancer prevention, enrolling more than 19,000 women. This year alone, the National Institutes of Health, the CDC, and the Department of Defense will collectively spend more than $850 million on breast cancer research.

This month, we recognize breast cancer survivors, those battling the disease, and the family members and friends who are a tireless source of love and encouragement for these individuals. Their courage, hope, and faith are an inspiration to all of us. We appreciate the efforts of medical professionals and researchers who work to find a cure for this deadly disease, and I urge all Americans to talk with friends and loved ones about the importance of breast cancer screening and early detection. By working together, we can raise awareness and help people live longer and healthier lives.

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 October 2005 as National Breast Cancer Awareness Month. I call upon Government officials, businesses, communities, health care professionals, educators, volunteers, and all the people of the United States to continue our Nation's strong commitment to preventing and treating breast cancer and to finding a cure for this disease.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20152
Filed 10–4–05; 9:56 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7937 of September 30, 2005

National Disability Employment Awareness Month, 2005

By the President of the United States of America

A Proclamation

Across America, individuals with disabilities are making important contributions in the workplace. This month, we celebrate their accomplishments and reaffirm our commitment to ensuring that the opportunities of America are available and accessible to every citizen.

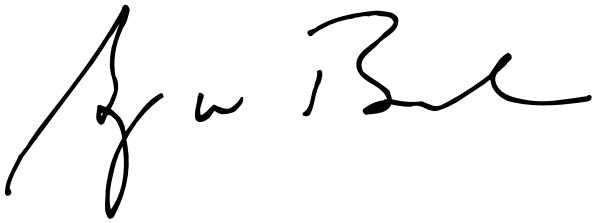
Fifteen years ago, President George H. W. Bush signed into law the Americans with Disabilities Act of 1990 (ADA), reducing barriers for millions of Americans with disabilities and providing a mandate for the elimination of discrimination in the workplace and in the community. Since the ADA was enacted, people with disabilities have been able to participate more fully in the workforce, and our Nation has become stronger and more just. Yet more work remains, and we continue our efforts to enable Americans with disabilities to live and work with greater freedom.

In the spirit of the ADA, my Administration's New Freedom Initiative has expanded access to assistive technologies, education, and opportunities for people with disabilities to integrate into the workforce. I signed into law legislation that improves the Individuals with Disabilities Education Act to ensure that our young people with disabilities are prepared for the many opportunities ahead. Through these and other efforts, we are working to ensure that Americans with disabilities can realize the promise of America.

To recognize the contributions of Americans with disabilities and to encourage all citizens to ensure equal opportunity in the workforce, the Congress, by joint resolution approved as amended (36 U.S.C. 121), has designated October of each year as ''National Disability Employment Awareness Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 2005 as National Disability Employment Awareness Month. I call upon Government officials, labor leaders, employers, and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20153
Filed 10–4–05; 9:56 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7938 of September 30, 2005

National Domestic Violence Awareness Month, 2005

By the President of the United States of America

A Proclamation

Domestic violence is a great evil and an offense against human dignity that shatters lives and robs children of their innocence. Where it occurs, homes are transformed into places of danger and despair. During National Domestic Violence Awareness Month, we renew our commitment to preventing domestic violence.

We are making progress in the fight against violence in the home. Over the past decade, the domestic violence rate has declined by an estimated 59 percent. But much work remains to be done. My Administration remains committed to preventing domestic abuse by supporting victims and punishing offenders. We have secured historic levels of funding for the Violence Against Women programs at the Department of Justice, presided over an increase in Federal prosecutions for crimes of violence against women, and implemented a program to help fund transitional housing for victims fleeing domestic abuse.

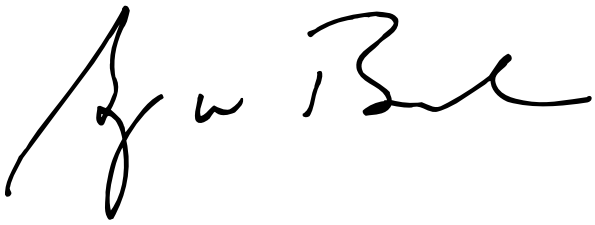
To increase access to comprehensive support and services for victims of domestic violence, in 2003 I announced the creation of the Family Justice Center Initiative. These centers bring together police officers, attorneys, counselors, doctors, victims' advocates, chaplains, and others so that domestic violence victims can more easily find the help and support they need. The Department of Justice has awarded over $20 million to support the creation of 15 Family Justice Centers across the country, and several of these centers have already opened their doors and are making a difference in victims' lives.

Faith-based and community organizations are also making vital contributions in the effort to combat domestic violence. These organizations are fostering an environment where victims can step out of the shadows and get the help and care they need. Through initiatives like the Faith-Based and Community Organization Rural Pilot Program and the Safe and Bright Futures for Children Initiative, the Departments of Justice and Health and Human Services are providing funding to support these organizations in their life-changing work.

I appreciate all those who work to end domestic violence and to protect vulnerable members of our society. By working together, we continue to build a society that respects the life and dignity of every person.

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 October 2005 as National Domestic Violence Awareness Month. I urge all Americans to reach out to help victims of domestic violence and help to make ending domestic violence a national priority.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20154
Filed 10–4–05; 9:56 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7939 of September 30, 2005

Child Health Day, 2005

By the President of the United States of America

A Proclamation

Children are a precious gift, and we have a responsibility to help them realize a hopeful and promising future. On Child Health Day, we underscore the importance of healthy and active lifestyles for our Nation's young people, and we reaffirm our commitment to helping them use their gifts to work toward a successful future.

We have high aspirations for all our Nation's children. Parents play the central role in ensuring the health and well-being of their children and in creating a safe and nurturing environment. Schools, communities, and government leaders can support the work of parents by helping to build a society based on the fundamental values of respect, honesty, self-restraint, fairness, and compassion. We must all continue to promote a culture of responsibility in which families and communities teach young people to understand that their decisions affect their health now and in the future.

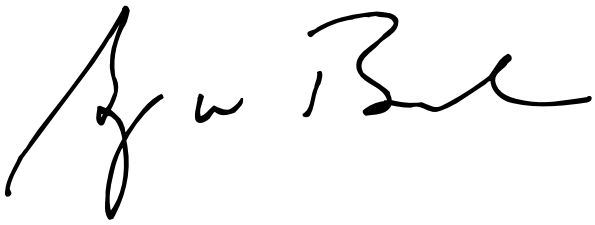
My Administration remains committed to giving parents, teachers, mentors, and communities the resources they need to help children avoid drugs, alcohol, violence, early sexual activity, and other dangerous behaviors. Through the Helping America's Youth initiative, led by First Lady Laura Bush, we are helping children to overcome the challenges they may face so they can lead healthy lives and realize their full potential.

Young people are America's future leaders, and we can all work to instill the values that sustain a free society. On this day and throughout the year, I urge our citizens to give their time and talents to benefit our Nation's youth.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as ''Child Health Day'' and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 3, 2005, as Child Health Day. I call upon families, schools, child health professionals, faith-based and community organizations, and governments to help all our children discover the rewards of good health and wellness.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20155
Filed 10–4–05; 9:56 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13386 of September 30, 2005

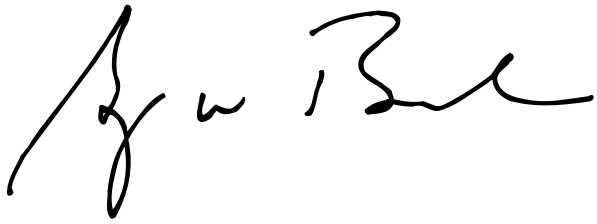
Further Amendment to Executive Order 13369, Relating to the President's Advisory Panel on Federal Tax Reform

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to further extend the reporting deadline of the President's Advisory Panel on Federal Tax Reform, it is hereby ordered as follows:

Section 1. Section 5 of Executive Order 13369 of January 7, 2005, as amended by Executive Order 13379 of June 16, 2005, is further amended by deleting ''September 30, 2005'' and inserting in lieu thereof ''November 1, 2005''.

Sec. 2. Section 7 of Executive Order 13369 of January 7, 2005, is further amended by deleting ''30 days after submitting its report pursuant to section 5 of this order'' and inserting in lieu thereof ''November 15, 2005''.

Sec. 3. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.



THE WHITE HOUSE,
September 30, 2005.

[FR Doc. 05–20156
Filed 10–4–05; 9:57 am]
Billing code 3195–01–P

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 2132/P.L. 109–78

To extend the waiver authority of the Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency. (Sept. 30, 2005; 119 Stat. 2043)

H.R. 2385/P.L. 109–79

To extend by 10 years the authority of the Secretary of Commerce to conduct the quarterly financial report program. (Sept. 30, 2005; 119 Stat. 2044)

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H.R. 3864/P.L. 109–82

Assistance for Individuals with Disabilities Affected by Hurricane Katrina or Rita Act of 2005 (Sept. 30, 2005; 119 Stat. 2050)

S. 1752/P.L. 109–83

To amend the United States Grain Standards Act to reauthorize that Act. (Sept. 30, 2005; 119 Stat. 2053)

H.R. 3667/P.L. 109–84

To designate the facility of the United States Postal Service located at 200 South Barrington Street in Los Angeles, California, as the "Karl Malden Station". (Oct. 4, 2005; 119 Stat. 2054)

H.R. 3767/P.L. 109–85

To designate the facility of the United States Postal Service located at 2600 Oak Street in St. Charles, Illinois, as the "Jacob L. Frazier Post Office Building". (Oct. 4, 2005; 119 Stat. 2055)

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